90-952 (9)

No.

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

JANICE G. CLARK, *et al.*,
Appellants,

v.

CHARLES "BUDDY" ROEMER, *et al.*,
Appellees.

On Appeal from the United States District Court for the Middle District of Louisiana

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APPENDIX TO JURISDICTIONAL STATEMENT

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1990

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UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

JANICE CLARK, ET AL CIVIL ACTION

VERSUS NUMBER 86-435-A

CHARLES "BUDDY" ROEMER, GOVERNOR
STATE OF LOUISIANA, ET AL

[Entered October 31, 1990]

Before DAVIS, Circuit Judge, PARKER and POLOZOLA, District Judges

FRANK J. POLOZOLA, District Judge:

This action was instituted by the plaintiffs under Sections 2 and 5 of the Voting Rights Act of 1965 (Act), 42 U.S.C. §§ 1973 and 1973c.[1] Plaintiffs

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[1] The plaintiffs also alleged various constitutional violations which are not before the Court at this time.

challenge the method in which the State of Louisiana elects its district court, family court, and court of appeal judges and also seek to enjoin the election of all state district court, family court, and court of appeal judges in Louisiana which have not been precleared under Section 5 of the Act, 42 U.S.C. § 1973c.[2/] A three-judge Court was convened to hear the Section 5 claim.

This matter is now before the Court to consider plaintiffs' motion to enjoin the election for any judgeship which has not been precleared by the Attorney General of the United States.

[2/] The plaintiffs' Section 2 claim was heard by Judge Parker sitting as a single judge court. Following the decision rendered by the Fifth Circuit Court of Appeals in League of United Latin American Citizens Council #4434 v. Clements, 914 F.2d 620 (5th Cir. 1990) (en banc), the Section 2 claim was dismissed.

The defendants object to any elections being enjoined and further seek a declaration from the Court that preclearance has already been obtained for some of the positions which are now being challenged by the plaintiffs. The parties also seek modification of certain orders previously issued by the Court.

I. Background

In the State of Louisiana, the judicial power is vested in a supreme court, courts of appeal, district courts, and other courts authorized by the Louisiana Constitution.[3/] Judges in Louisiana are elected by a vote of the

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[3/] La. Const. art. 5, § 1. For a detailed and authoritative analysis of the judiciary article set forth in the 1974 Louisiana Constitution, see Hargrave, The Judiciary Article of the Louisiana Constitution of 1974, 37 La. L. Rev. 765 (1977).

citizens.[4] Both prior to and subsequent to the Voting Rights Act of 1965, the district judges were elected on an at-large basis by district, while the judges on the courts of appeal were elected by circuit, on both a division and an at large basis.[5] Indeed, many of the existing judgeships in Louisiana were created prior to the passage of the Voting Rights Act of 1965.[6] "Article V [of the 1974 Constitution] on the

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[4] La. Const. art. 5, § 22. See also the laws which existed prior to the adoption of the Louisiana Constitution of 1974: La. Const. of 1921, art. 7, § 69; La. Const. of 1913, arts. 109, 119, and 124; and La. Const. of 1898, art. 109.

[5] La. Const. art. 5, § 14 (district judges) & § 9 (courts of appeal). See also La. Const. of 1921, art. 7, § 31 (district judges); La. Const. of 1921, §§ 20, 21; La. Const. of 1913, art. 100; La. Const. of 1898, art. 100; and La. Const. of 1879, art. 97 (courts of appeal).

[6] See infra Appendix B to this opinion.

judiciary makes few basic changes in the existing court system."[7] This statement was particularly true insofar as the selection of judges was concerned. While there was some debate over whether to adopt a merit selection system to select judges,[8] the delegates to the 1973 Constitutional Convention overwhelmingly voted to retain the concept of electing district judges on a district-wide, at-large basis and electing court of appeal judges by circuit.[9]

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[7] Hargrave, supra note 3, at 766-67.

[8] 2 Project of a Constitution for the State of Louisiana, art. VI, § 43 (La. St. L. Inst. 1954).

[9] Hargrave, supra note 3, at 814-15 (emphasis supplied, footnotes omitted):

> Though the committee spent much time hearing testimony on the issue [merit selection plan], the result in favor of election

(Footnote continued on following page)

As the Louisiana Legislature

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[9] (Footnote continued from preceding page) was a foregone conclusion. The basic populist orientation of the convention tended toward a greater voice for the people and a resistance to gubernatorial or **small group power**. A convention that resisted reducing the number of state-wide elected officials and that was intent on shortening the terms of appellate judges was not likely to abolish election of judges. In any event, the political forces were such that the merit selection concept had no chance. The committee recommended election by unanimous vote.

* * *

The convention was of a similar mind. A floor amendment that did not require, but simply authorized, the legislature to adopt a merit selection plan was overwhelmingly defeated by a vote of 26-87. In fact, the election of judges was implicit in the committee proposal, the convention adopted without objection a floor amendment making the requirement explicit by stating "all judges shall be elected."

added judgeships in the various district courts, family courts, and courts of appeal, the state, on most occasions, would seek preclearance of the newly enacted act from the Attorney General of the United States. However, on some occasions, the state failed to obtain the requisite preclearance.[10] Many of the

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[10] The State of Louisiana has absolutely no excuse for its failure, whether negligent or intentional, to obtain preclearance of legislation when such preclearance is required by the Voting Rights Act of 1965. If this were the first time a three-judge court in the Middle District of Louisiana was confronted with the problem of hearing a suit seeking to enjoin an election because of the state's failure to obtain preclearance, the Court might avoid commenting on the matter. It appears to this Court that those in charge of the election process in Louisiana should undertake a very careful and detailed inventory of all legislation which relates to the election of officials in Louisiana and determine once and for all whether preclearance has been obtained from the Attorney General if such is required under the Voting Rights Act of 1965. The people of the State of

(Footnote continued on following page)

judgeships which the state failed to preclear have been in existence for many years. In many instances the state sought and obtained preclearance of an additional position in a particular district in which preclearance had not been sought for an earlier position."[11]

It is in this background that the three-judge Court must decide whether the judicial elections in the State of Louisiana may proceed and whether those persons elected may take the oath of

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[10](Footnote continued from preceding page) Louisiana, the candidates and incumbents, and the federal courts deserve nothing less.

[11] For reasons given infra, this Court has determined that these earlier positions were expressly precleared by the Attorney General when he precleared a subsequent act increasing the number of judge positions in a particular district or circuit. See infra Part 111(B), pp. 11-15 of this opinion and Appendix A, October 22, 1990, order, Part I, at 1-3.

office. This Court acknowledges the seriousness of the task before it. The State of Louisiana must have judges to preside over the large number of civil and criminal matters which are now pending and which will be filed in the future. The State of Louisiana must also comply with the provisions of the Voting Rights Act of 1965, which has been passed by the Congress and held constitutional by the United States Supreme Court.

II. PRIOR ACTION OF THE THREE-JUDGE COURT

A number of orders have been issued by this three-judge Court. On September 28, 1990, the Court issued an order allowing elections to proceed in those judgeships which had not been precleared by the Justice Department, but enjoined the winning candidates from taking the oath of office pending further

orders of the Court.[12] On October 2, 1990, this Court issued an order involving elections for those judgeships created by Act 801 of the 1987 Louisiana Legislature and certain other judgeships. The three-judge Court allowed the elections for the Act 801 judgeships to proceed, but refused to allow any additional qualification for these judgeships. In addition, the three-judge Court allowed elections to proceed in certain unprecleared judgeships, and set the qualification period for these

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[12] Document 413 in the record. The candidates for these positions had previously qualified in July of 1990 and had begun campaigning for these positions. Absentee voting for the October 6 election had been in progress since September 24, 1990. The judgeships involved in this order were not previously enjoined by Judge Parker in the Section 2 case. These judgeships were the subject of the Justice Department's letters of objection of September 23, 1988 and May 12, 1990, and its letter of September 17, 1990.

judgeships from October 3, 1990, to October 5, 1990.[13] The winners of these elections were enjoined from taking office.[14]

On October 5, 1990, the Court issued an oral ruling which involved elections in certain court of appeal races.[15] On October 18, 1990, the Court heard oral arguments in connection with a

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[13] Although the plaintiffs objected to the length of the qualification period, the period set by the Court was in accordance with the Louisiana law. The Louisiana First Circuit Court of Appeal has approved such a period of qualification in a very similar case which allowed three days for qualification. Jones v. State, 336 So. 2d 59 (La. App. 1st Cir.), writ denied, 336 So. 2d. 515 (La. 1976). (New judgeship was created by an act passed by the Louisiana Legislature on June 30, 1976, signed by the Governor on the same date, and qualifying ordered to commence July 2, 1976 and end on July 5, 1976).

[14] See documents 418, 419, and 420 in the record.

[15] See document 429 in the record.

number of motions filed by the parties. Prior to the hearing, the Court sent to the parties a list of questions on which the Court desired to hear oral arguments.[16] On October 22, 1990, after the United States Supreme Court had summarily affirmed Brooks v. State Board of Education, the Court issued a very detailed order.[17] In its order of October 22, 1990, the three-judge Court ruled:

1. Elections for those judgeships previously precleared by the Attorney General or which did not require

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[16] See documents 434 and 449B in the record.

[17] No. CV 288-146, 1989 W.L. 180759 (S.D. Ga. Dec. 1, 1989), modified, (S.D. Ga. May 29 and June 25, 1990) (three-judge Court), aff'd mem., Nos. 90-272 & 90-332, 1990 W.L. 120083, 1990 W.L. 132204 (U.S. Oct. 15, 1990). See document 456 in the record. This order of October 22, 1990, is attached to this opinion as Appendix A.

preclearance under the Voting Rights Act of 1965 were to proceed as scheduled;

2. The Court determined that a number of statutes creating judicial positions in Louisiana had been precleared by the Attorney General. The Court noted that when "the Attorney General cleared statutes creating an ultimate number of judicial seats in a particular judicial district, that preclearance constituted approval of all judicial seats necessary to reach the ultimate number of judicial positions in the district."[18] The Court ordered elections for these judgeships to proceed on November 6 and December 8, 1990, as previously ordered by the Court. Finally, the Court allowed those judges

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[18] Order of October 22, 1990, Part I, document 456 in the record; see infra Appendix A, at 1-2.

from these precleared districts who were elected on October 6 or who were to be elected in the November 6 or December 8, 1990, elections to take the oath of office.[19]

3. After reviewing the record, the Court found certain judgeships had not been precleared by the Attorney General as required by Section 5 of the Voting Rights Act of 1965. Because the Court had previously allowed qualification for these judgeships to proceed and campaigning for these positions had already begun, the Court reissued its order which allowed the elections for these unprecleared judgeship positions to proceed on

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[19] Id. at 3.

November 6 and December 8, 1990.[20] However, the Court's order provides that those "persons elected as judges shall serve provisionally pending the further

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[20] As will be noted infra, the Court has the right to determine what remedy is appropriate where the State has failed to obtain the requisite preclearance. This Court took into consideration the confusion an order enjoining certain elections might cause the voters since the election process had already begun with the October 6 election, based in part on a prior order issued by this Court. It must be noted that this Court's prior order was issued when this Court and the parties were considering whether Section 5 preclearance was required under the facts of this case. While the Supreme Court had held that Section 5 applied to judicial elections in Haith v. Martin, 618 F. Supp. 410 (E.D.N.C. 1985) (three-judge court), aff'd mem., 477 U.S. 901, 106 S. Ct. 3268, 91 L. Ed. 2d 559 (1986), there was some doubt as to whether preclearance was required when the only change was the addition of judicial positions in a district or circuit which had previously been precleared. However, subsequent to that order, the Supreme Court rendered its summary opinion in Brooks, supra.

orders of this Court."[21/] Finally, the Court ordered that within ninety days "the State of Louisiana shall either obtain preclearance of the said judgeships from the Attorney General of the United States or shall file a suit for declaratory judgment with the United States District Court for the District of Columbia under the provisions of 42 U.S.C. § 1973c."[22/] If preclearance is obtained from the Attorney General, or the State of Louisiana obtains a favorable ruling from its declaratory judgment suit, those judges elected may stay in office. If, however, the State of Louisiana fails to obtain approval from the Attorney General or a favorable

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21/ Order of October 22, 1990, Part III, document 456 in the record; see infra Appendix A, at 5.

22/ Id. at 5.

ruling in its declaratory judgment suit, the newly elected judges of the unprecleared judgeships may only remain in office for 150 days after the finality of the judgment in that case.[23/]

4. The Court enjoined the State of Louisiana from conducting an election or allowing any person to take the oath of office for judgeships created by Act 801 of the 1987 Louisiana Legislature. The Court also ordered that if this Act is precleared or otherwise approved, the state must reopen qualifications for these judicial positions.[24/]

23/ Id. at 6.

24/ Id. at 6. As will be noted infra, the Court in its October 22 order enjoined the election for these positions because the Court had previously refused to allow the qualification period for these judgeships to be reopened. Qualification for these judgeships had taken place over two years ago. In the exercise of its discretion in formulating

(Footnote continued on following page)

After issuing its October 22, 1990, order, the Court still had before it a motion to intervene filed by a candidate for a judgeship[25/] and plaintiffs' motion to again enjoin the elections for the unprecleared positions. On October 24, 1990,[26/] the three-judge

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[24/] (Footnote continued from preceding page) a remedy to be followed in the unprecleared judgeships, the Court found that it could not allow these elections to proceed without reopening the qualification period. See NAACP v. Hampton County Election Comm'n, 470 U.S. 167, 177, 105 S. Ct. 1128, 1135, 84 L. Ed. 2d 124 (1985). Because the election process had already begun and to avoid any further confusion to the voters in Louisiana, the Court enjoined these elections until further orders of the Court.

[25/] The motion to intervene was filed by H. Michael Aaron, who was a candidate for judge of the Family Court for the Parish of East Baton Rouge.

[26/] See document 459 in the record.

Court denied the motion to intervene.[27/] The Court also denied plaintiffs' motion to enjoin the election because the election dates had not been precleared by the Attorney General.[28/] There are now pending before this Court a motion for clarification and a motion for stay and injunction which have just been filed by

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[27/] The Court found that Aaron should not be allowed to intervene as a matter of right under Rule 24(a), St. Helena Parish School Bd. v. Hall, 287 F.2d 376 (5th Cir. 1961), cert. denied, 368 U.S. 830, 82 S. Ct. 52, 7 L. Ed. 2d 33 (1961), or permissively under Rule 24(b), Hoots v. Commonwealth of Pennsylvania, 672 F.2d 1133 (3rd. Cir. 1982) of the Federal Rules of Civil Procedure.

[28/] The Court held that a "decree of the United States District Court is not within the reach of Section 5 of the Voting Rights Act." Connor v. Johnson, 402 U.S. 690, 691, 91 S. Ct. 1760, 1762, 29 L. Ed. 2d 296 (1976); East Carroll Parish School Bd. v. Marshall, 424 U.S. 636, 96 S. Ct. 1083, 47 L. Ed. 2d 296 (1976).

the plaintiffs and shall be considered in this opinion.

III. THE ROLE OF THE THREE-JUDGE COURT IN THIS CASE

Section 5 of the Voting Rights Act limits the jurisdiction of this three-judge Court to a determination of: "(i) whether a change was covered by § 5, (ii) if the change was covered, whether § 5's approval requirements were satisfied, and (iii) if the requirements were not satisfied, what remedy was appropriate."[29/]

A. Does Section 5 Apply In This Case?

[29/] City of Lockhart v. United States, 460 U.S. 125, 129 n.3, 103 S. Ct. 998, 1001 n.3, 74 L. Ed. 2d 863 (1983); United States v. Board of Supervisors of Warren County, 429 U.S. 642, 645-47, 97 S. Ct. 833, 834-35, 51 L. Ed. 2d 106 (1977) (per curiam).

The defendants argue that Section 5 of the Voting Rights of 1965 does not apply to judicial elections. We recognize that this Court and the United States Supreme Court have previously held that the "one-man, one-vote" principle does not apply to judicial elections.[30/] However, in Haith v. Martin, the United States Supreme Court held that Section 5 of the Voting Rights Act of 1965 does apply to judicial elections.[31/] The issue which remained in doubt was whether the

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[30/] Wells v. Edwards, 347 F. Supp. 453 (M.D. La. 1972), aff'd mem., 409 U.S. 1095, 93 S. Ct. 904, 34 L. Ed. 2d 679 (1973). See also Holshouser v. Scott, 335 F. Supp. 928 (M.D.N.C. 1971), aff'd mem., 409 U.S. 807, 93 S. Ct. 43, 34 L. Ed. 2d 68 (1972); Voter Information Project v. City of Baton Rouge, 612 F.2d 208 (5th Cir. 1980).

[31/] Haith v. Martin, 618 F. Supp. 410 (E.D. N.C. 1985), aff'd mem., 477 U.S. 901, 106 S. Ct. 3268, 91 L. Ed. 2d 559 (1986). See also Kirksey v. Allain, 635 F. Supp. 347 (S.D. Miss. 1986).

state had to obtain preclearance for additional judicial positions in a district or circuit which had previously been precleared by the Attorney General. In Brooks, the Supreme Court affirmed a three-judge court which had held preclearance was required in such a case.[32] Therefore, we hold that Section 5 of the Voting Rights Act of 1965 applies where additional judgeships have been added to a district or circuit which has previously been precleared by the Attorney General.

B. Have Section 5's Approval Requirements Been Satisfied?

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[32] Brooks v. State Board of Elections, No. CV 288-146, 1989 W.L. 180759 (S.D. Ga. Dec. 1, 1989), modified, (S.D. Ga. May 29 and June 25, 1990) (three-judge Court), aff'd mem., Nos. 90-272 & 90-332, 1990 W.L. 120083, 1990 W.L. 132204 (U.S. Oct. 15, 1990).

The State of Louisiana argues that when the Attorney General precleared subsequent additional judgeships in a particular district he thereby approved previously added, unprecleared judgeships.[33] The plaintiffs contend that each additional judgeship in a particular district must be specifically submitted to the Attorney General for approval. We find that when the Attorney General precleared statutes creating an ultimate number of judicial seats in a particular judicial district, that preclearance constituted approval of all judicial seats necessary to reach the

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[33] The State of Louisiana also argues that when the Attorney General precleared the Louisiana Constitution of 1974, he approved the concept of electing judges on an at-large basis in Louisiana. The Court rejects this argument. We find that the state has failed to prove that the preclearance of constitution preclears the method of electing judges.

ultimate number of judicial positions in that district. For example, the First Judicial District Court in Caddo Parish has nine judicial positions. Four of these judgeships were in existence prior to the passage of the Voting Rights Act of 1965 and did not need preclearance.[34/] The remaining positions did require preclearance from the Attorney General. The State of Louisiana submitted and obtained approval of Divisions E, G, H, and I.[35/] For some reason Act 117 of 1973, which created Division F, was not submitted for approval when it passed,

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34/ These were Divisions A, B, C, and D.

35/ Division E was added by Act 2 of 1966 and was precleared on August 18, 1986. Division G was added by Act 46 of 1976 and precleared on August 11, 1976. Division H was added by Act 39 of 1978 and precleared on September 20, 1978. Division I was added by Act 21 of 1982 and precleared on December 2, 1982.

and the Attorney General denied preclearance on September 23, 1988. We find that when the Attorney General approved Divisions G, H, and I, he also approved Division F. We reach this conclusion because each of the Acts of the legislature which added a new division in Caddo Parish provided that the Act increased the number of judges in the district from an existing number to a new number. When the Attorney General precleared seven judicial positions in Caddo Parish at the time Division G was added, he thereby expressly approved the first six positions, which included Division F. Contrary to plaintiffs' argument, we find that there was express approval by the Attorney General for those judicial positions set forth in

Part I of our October 22, 1990, order.[36] The language of the various acts[37] submitted to the Attorney General, as well as the letters[38] submitted by the

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[36] See supra text accompanying note 18 and infra Appendix A, at 2-3.

[37] Article 3, Section 15(B) of the Louisiana Constitution of 1974 provides that: "A bill enacting, amending, or reviving a law shall set forth completely the provisions of the law enacted, amended, or revived. No system or code of law shall be adopted by general reference to it."

[38] See Defendants' exhibits 1-6 which were introduced in the record at the various hearings held by the three-judge Court. There are two documents designated as D-6. In the submission to the Attorney General, the Act submitted, and in most cases the letter of submission, clearly and expressly states that the number of judges in a particular district is being increased from one number to another. This procedure is clearly distinct and different from the facts set forth in McCain v. Lybrand, 465 U.S. 236, 104 S. Ct. 1037, 79 L. Ed. 2d 271 (1984), which is relied on by the plaintiff. It cannot be said that the submission by the State of Louisiana was ambiguous concerning the scope of the request.

State of Louisiana seeking preclearance, support this conclusion. Thus, the change submitted to the Attorney General is not only the amendment, but the entire act as passed by the legislature. When the Attorney General approves the new act, he not only approves the amended portion but necessarily approves the older, reenacted part, which forms part of the new act.[39] Thus, when an act provides for a certain number of judicial positions, approval of that act must

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[39] The example which the Court used in our opinion involved Caddo Parish. The same reasoning was used for each of the parishes in which the court found preclearance by the Attorney General when he approved a subsequent act in a particular district. As noted earlier, those judicial positions which the court found were precleared by the Attorney General are set forth in the order of October 22, 1990, Part I, document 456 in the record, infra in Appendix A, at 2-3.

include all of the judicial positions necessary to reach that number.

In determining whether the preclearance sought by the State of Louisiana was proper within the meaning of Section 5 of the Voting Rights Act of 1965, the Court must determine whether the submission was in an "unambiguous and recordable manner" and whether the submission was "in fact evaluated" by the Attorney General.[40] The Court finds that the evidence presented in this case does show that the submissions were made to the Attorney General in an unambiguous manner, and he approved the various increases in the number of judges to be

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[40] Allen v. State Bd. of Elections, 393 U.S. 544, 571, 89 S. Ct. 817, 834, 22 L. Ed. 2d 1 (1969); United States v. Board of Comm'rs of Sheffield, Alabama, 435 U.S. 110, 136, 98 S. Ct. 965, 981, 55 L. Ed. 2d 148 (1978); McCain v. Lybrand, 465 U.S. 236, 249, 104 S. Ct. 1037, 1046, 79 L. Ed. 2d 271 (1984).

added to each of the districts set forth in Part I of our October 22 order.[41]

The Court also finds that preclearance was not obtained from the Attorney General as to those judicial positions listed in Part II of the Court's October 22 order. Unlike the judicial positions which we found to have been precleared by the subsequent approval of an act increasing the number of judges in a particular district, there was no subsequent approval of the positions listed in Part II.[42] Insofar

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[41] The evidence submitted by the parties indicates that the Attorney General approved the method Louisiana used for adding judges approximately 81 times. Preclearance was denied on only three dates: September 23, 1988; May 12, 1989; and September 17, 1990. These denials came after Judge Parker had rendered his decision in the Section 2 case on August 15, 1988.

[42] The Court originally concluded that Section B in the 20th Judicial

(Footnote continued on following page)

as these positions are concerned, the Court finds that acts passed by the legislature were either not submitted for preclearance, or, if submitted, preclearance was denied by the Attorney General. As to those judicial positions which have not been precleared, the Court must determine what remedy is appropriate.[43]

C. What Remedy is Appropriate for the Unprecleared Positions?

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[42] (Footnote continued from preceding page) District was not precleared. Now, in accordance with the Court's reasons, infra text pp. 24-26 of this opinion, the Court finds that this judicial position was precleared. See Defendants' exhibit D-4.

[43] This court does not have the power to order the Attorney General to preclear a statute, nor does it have the power to equitably preclear a statute no matter how long it may have been in force. McCain v. Lybrand, 465 U.S. at 249-53, 104 S. Ct. at 1046-47.

Having concluded that certain judicial positions have not been precleared as required by Section 5 of the Voting Rights Act of 1965, the Court must now determine what remedy is appropriate under the facts of this case. The Court feels it is important to review the actions the Court has taken thus far insofar as the unprecleared positions are concerned.

In its order of October 22, 1990, the Court did not enjoin the election held on October 6, or the elections to be held on November 6 and December 8, 1990. As noted in the Court's summary of the orders issued by the three-judge Court in this case,[44] qualifying for some of these judicial positions had begun before any hearing

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[44] See supra Part II, pp. 5-10 of this opinion.

was requested to enjoin these elections. Absentee voting had begun on September 24 for the October 6 elections. Because of the confusion over whether Section 5 applied where additional judges were added in districts or circuits which had previously been precleared by the Attorney General, the three-judge Court had permitted the October 6 election to proceed, and ordered elections to be set for November 6 and December 8, 1990. Much time and expense had been expended by the candidates for these elections. The election set for October 6 coincided with an election for a United States Senator and numerous other offices, as well as approval of several constitutional amendments.[45/] Furthermore,

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[45/] One of the issues on the ballot concerned whether a lottery should be allowed in Louisiana. This issue, as

(Footnote continued on following page)

November 6 is the date for general elections for United States Senators and Representatives. It was the Court's desire to have these judicial elections coincide with these other major elections to ensure high voter participation.[46/] To have enjoined the elections for some of the judge races would have only increased the voter confusion. While the Court does not intend to place the blame on any one party, the request for an

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[45/](Footnote continued from preceding page) well as the election for United States Senator, had attracted substantial voter interest. This factor was taken into consideration by the three-judge Court when it approved the dates for the election.

[46/] In NAACP v. Hampton County Election Comm'n, 470 U.S. 166, 178, 105 S. Ct. 1128, 1135, 84 L. Ed. 2d 124 (1985), the Supreme Court noted: "In addition, an election in March is likely to draw significantly fewer voters than an election held simultaneously with a general election in November." (footnote omitted).

injunction of the unprecleared judicial positions came very close to the October 6 election day. Furthermore, the Fifth Circuit rendered its en banc decision in League of United Latin American Citizens Council #4434 v. Clements (LULAC) on September 25, 1990. LULAC had an important and direct effect on the Section 2 claim which was being handled by Judge Parker.[47] Judge Parker had enjoined certain judicial elections because he found Section 2 violations. After the Fifth Circuit's en banc decision, Judge Parker lifted his injunction and later dismissed the Section 2 claim. The judicial positions that were enjoined in the Section 2 claim included both precleared and unprecleared judgeships. At the time the Court

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[47] Clark v. Edwards, 725 F. Supp. 285 (M.D. La. 1988).

conducted the hearing which led to its October 22 order, it was obvious that the candidates had begun campaigning and spending money in reliance on the Court's prior decisions ordering elections to be held on October 6, November 6, and December 8, 1990. Furthermore, the Supreme Court had not yet rendered its decision in Brooks at the time the Court conducted its hearing.[48]

Thus, the Court, sitting as a court of equity, had to balance the "interest of state and local authorities in managing their own affairs consistent

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[48] Brooks v. State Bd. of Educ., No. CV 288-146, 1989 W.L. 180759 (S.D. Ga. Dec. 1, 1989), modified, (S.D. Ga. May 29 and June 25, 1990) (three-judge Court), aff'd mem., Nos. 90-272 & 90-332, 1990 W.L. 120083, 1990 W.L. 132204 (U.S. Oct. 15, 1990). The memorandum opinion of the Supreme Court was rendered on October 15, 1990. This memorandum opinion was important insofar as the issue of whether Section 5 applied to judicial elections was concerned.

with the Constitution"[49] with the rights of the plaintiffs under the Voting Rights Act of 1965. The Court also had to consider what effect its decision would have on the voters in the pending elections. Finally, the Court had to consider the effect of its decision on the state's judicial system, both past and future. We are not unmindful of the fact that the state itself is responsible for the consequences of its failure to comply with Section 5. However, we believe the potential harm to all of the citizens of Louisiana outweighs the potential harm, if any, of allowing the elections to continue, with the winning candidates being seated on a provisional

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[49] Spallone v. United States, ___ U.S. ___, ___, 110 S. Ct. 625, 632, 107 L. Ed. 2d 644 (1990), relying on Milliken v. Bradley, 433 U.S. 267, 280-81, 97 S. Ct. 2749, 2757, 53 L. Ed. 2d 745 (1977).

basis. To remove judges from unprecleared positions or to fail to vest them with the full power and authority of their office even on a provisional basis could lead to the possible reversal of convictions in criminal cases and cast a shadow on civil judgments.

Furthermore, to completely shut down these unprecleared positions under the facts of this case would only cause additional hardships on litigants and create more problems in the criminal justice system in Louisiana.[50]

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[50] All parties to this litigation concede that the legislature added positions to the various district courts and the courts of appeal because the caseload required such. There are no allegations that the additional judges were added in a racially discriminatory manner. It is the concept of electing judges on an at-large basis that is the subject of the discrimination charge in this case.

Considering the above factors, the Court decided in its October 22 order to allow the elections for the judicial positions which had not been precleared to continue. However, the Court ordered that candidates could only "serve provisionally pending further orders of this Court."[51/] The Court also set a deadline for the State of Louisiana to either obtain preclearance of the judicial positions from the Attorney General or to file a suit for declaratory judgment with the United States District Court for the District of Columbia.[52/] Provisions were set forth in the order for the removal of judges elected to unprecleared judgeships if the state did

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[51/] Order of October 22, 1990, Part 111(1), document 456 in the record; see infra Appendix A, at 5.

[52/] Id., Part 111(2), (3), and (5), at 5-6.

not obtain relief from the Attorney General or the District Court for the District of Columbia.[53/] The Court also ordered judges elected to these unprecleared positions removed if the State of Louisiana chose to do nothing.[54/]

The action taken by the three-judge Court in this case closely parallels action taken in similar cases by the United States Supreme Court and other three-judge courts.[55/] In Perkins

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[53/] Id., Part III (5) and (6), at 6.

[54/] Id., Part III(6).

[55/] See Brooks v. State Bd. of Educ., No. CV 288-146, 1989 W.L. 180759 (S.D. Ga. Dec. 1, 1989), modified, (S.D. Ga. May 29 and June 25, 1990) (three-judge Court), aff'd mem., Nos. 90-272 & 90-332, 1990 W.L. 120083, 1990 W.L. 132204 (U.S. Oct. 15, 1990); NAACP v. Hampton County Election Comm'n, 470 U.S. 167, 105 S. Ct. 1128, 84 L. Ed. 2d 124 (1985); Berry v. Doles, 438 U.S. 190,

(Footnote continued on following page)

v. Matthews, the United States Supreme Court noted that "[i]n certain circumstances ... it might be appropriate to enter an order affording local officials an opportunity to seek federal approval and ordering a new election only if local officials fail to do so or if the required federal approval is not forthcoming.[56] The Perkins Court also noted that in determining the appropriate

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[55](Footnote continued from preceding page) 98 S. Ct. 2692, 57 L. Ed. 2d 693 (1978); United States v. County Comm'n, Hale County, Alabama, 425 F. Supp. 433 (S.D. Ala. 1977), aff'd mem., 430 U.S. 924, 97 S. Ct. 1540, 5 L. Ed. 2d 768 (1977); Georgia v. United States, 411 U.S. 526, 93 S. Ct. 1702, 36 L. Ed. 2d 472 (1973); Scaggs v. Larsen, 396 U.S. 1206, 90 S. Ct. 5, 24 L. Ed. 2d 28 (1969); Moore v. Leflore County Bd. of Election Comm'rs, 351 F. Supp. 848 (N.D. Miss. 1971); Wilson v. North Carolina State Bd. of Elections, 317 F. Supp. 1299 (M.D.N.C. 1970).

[56] 400 U.S. 379, 396-97, 91 S. Ct. 431, 441, 27 L. Ed. 2d 476 (1971); see also Berry v. Doles, 438 U.S. at 192, 98 S. Ct. at 2693.

remedy to be followed in cases in which the state had not obtained the requisite preclearance "other factors might be relevant, such as the nature of the changes complained of, and whether it was reasonably clear at the time of the election that the changes were covered by §5."[57] Furthermore, the Supreme Court noted:

> Since the District Court is more familiar with the nuances of the local situation than are we, and has heard the evidence in this case, we think the question of the appropriate remedy is for that court to determine, in the first instance, after hearing the views of both parties.[58]

We have concluded that it would be in the best interest of all concerned to allow the elections to proceed and to

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[57] 400 U.S. at 396, 91 S. Ct. at 441.

[58] Id. at 397, 91 S. Ct. at 441 (footnote omitted).

allow the newly elected judges to take office on a provisional basis while at the same time requiring the state to obtain preclearance from the Attorney General or the United States District Court for the District of Columbia. If the state obtains approval from the Attorney General, or if relief is granted by the District Court for the District of Columbia, the elections will stand. Otherwise, the court must set aside the elections. Such a procedure has been followed by the United States Supreme Court. Thus, in NAACP v. Hampton County Election Commission,[59] the Supreme Court, following Berry v. Doles[60] noted:

> As in Berry v. Doles, supra, it is appropriate in these

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[59] 470 U.S. 167, 105 S. Ct. 1128, 84 L. Ed. 2d 124 (1985).

[60] 438 U.S. 190, 98 S. Ct. 2692, 57 L. Ed. 2d 693 (1978)

> circumstances for the District Court to enter an order allowing appellees 30 days in which to submit these changes to the Attorney General for approval. If appellees fail to seek this approval, or if approval is not forthcoming, the results of the March 1983 election should be set aside. If, however, the Attorney General determines that the changes had no discriminatory purpose or effect, the District Court should determine, in the exercise of its equitable discretion, whether the results of the election may stand.[61]

A similar holding was set forth in Berry where the Court declared that "[i]f approval is obtained, the matter will be at an end. If approval is denied, appellants are free to renew to the District Court their request for simultaneous elections of all members of the Board at the 1978 general

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[61] 470 U.S. at 182-83, 105 S. Ct. at 1137-38 (citation omitted).

election."[62] In United States v. County Commission, Hale County, Alabama, the United States Supreme Court approved an order very similar to that issued by this court:

> That the November 2, 1976 election be held as scheduled; and that the two persons elected as Commissioners in said election and the other two members of the Hale County Commission shall serve provisionally pending the further orders and decrees of this court, and vested with all the power, authority, and duties accorded by law.[63]

Justice Black, sitting as a Circuit Justice, refused to enjoin an election in Oden v. Brittain, stating:

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[62] 438 U.S. at 193, 98 S. Ct. at 2694.

[63] 425 F. Supp. 433, 436 (S.D. Ala. 1977), aff'd mem., 430 U.S. 924, 97 S. Ct. 1540, 51 L. Ed. 2d 768 (1977). The three-judge court also set a deadline for the state to seek approval from the Attorney General.

> Intervention by the federal courts in state elections has always been a serious business. Here the city has already incurred considerable expense in preparing for an election to be held within the next three weeks. If this election were held, applicants could later bring suit to have it set aside. I thus do not see why these plans should be stopped in midstream in a case in which the legal issues are unclear, when the election cannot result in the severe irreparable harm necessary to justify the issuance of the extraordinary remedy of an injunction by an individual Justice.[64]

Other three-judge courts have allowed incumbents to remain in office or an election to proceed contingent on the state seeking approval from the Attorney General or the District Court for the District of Columbia, including the

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[64] 396 U.S. 1210, 1211, 90 S. Ct. 4, 5, 24 L. Ed. 2d 32 (1969)

courts in Brooks[65] and Moore v. Leflore County Board of Election Commissions.[66]

Finally, in Georgia v. United States,[67] the United States Supreme Court found itself in a dilemma similar

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[65] In Brooks, the three-judge court noted: "Thus, we believe it is appropriate for us to follow the course set out in Berry and N.A.A.C.P. v. Hampton County." 1989 W.L. 180759 at 21.

[66] 351 F. Supp. 848 (N.D. Miss. 1971). In Moore, the court ruled:

> Instead, we authorize and allow the general election to proceed as scheduled for the at-large election of county supervisors subject to stated conditions. . . . We reserve for decision at that time the issue of whether, under Sheffield v. Itawamba County Board of Supervisors, supra, this court, sitting as a court in equity and in the exercise of its discretion, should order the election of new supervisors on at-large basis or by districts as redistricted in accordance with the approved plan. 351 F. Supp. at 852-53.

[67] 411 U.S. 526, 93 S. Ct. 1702, 36 L. Ed. 2d 472 (1973).

to the one this Court faces under the facts of this case. The Supreme Court had stayed a three-judge order which had enjoined an election. The State of Georgia then proceeded with the election. The Supreme Court refused to set aside the election conducted by the State of Georgia stating:

> For the foregoing reasons, the judgment of the District Court is affirmed. Since, however, elections were conducted under the disputed 1972 plan by reason of this Court's stay order, it would be inequitable to require new elections at this time.[68]

This Court has previously ordered the elections to proceed in this case. Acting pursuant to this Court's orders, the state printed ballots, opened qualifications, and set election dates as ordered by the Court. The candidates

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[68] 411 U.S. at 541, 93 S. Ct. at 1711.

proceeded to qualify and to campaign. When the Court issued its order of October 22, 1990, the election of October 6 had already taken place, and run-offs were scheduled for the November 6 general election. Those candidates who did not participate in the October 6 election were campaigning for the November 6 election. The Court believes that "it would be inequitable" to stop the election process being conducted under the authority of an order **issued by this Court.** This is particularly so since the Court has provided that the winning candidates will only take office provisionally. If the State of Louisiana obtains preclearance or relief in a declaratory action filed with the District Court in the District of

Columbia, "the matter will be at an end."[69] If the state fails to obtain the requisite preclearance from the Attorney General or relief from the District Court in the District of Columbia, the results of the October 6, November 6, and December 8 elections involving unprecleared judicial positions "should be set aside."[70] The Court believes such a procedure is equitable under the facts of this case and protects the rights of all of the citizens of the State of Louisiana, while at the same time enforcing the provisions of the Voting Rights Act of 1965.

After this Court rendered its October 22 order, the plaintiffs filed a

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[69] Berry, 438 U.S. at 193, 98 S. Ct. at 2694.

[70] Hampton County, 470 U.S. at 183, 105 S. Ct. at 1137-38.

"Motion For Clarification and Reconsideration of the Three-Judge Court's October 22 Order Regarding Certain Judgeships."[71] The plaintiffs also filed a "Motion to the Three-Judge Court for Stay and Injunction Pending Appeal."[72] The Court shall discuss each of these motions separately.

IV. PLAINTIFFS' MOTION FOR RECONSIDERATION AND CLARIFICATION

The plaintiffs have filed a motion seeking to have the Court reconsider its October 22 order insofar as it applies to certain judgeships set forth in Part I of the Court's order. In Part I of the order of October 22, the Court set forth those judicial positions which the Court found to have been

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71/ Document 462 in the record.

72/ Document 466 in the record.

precleared by the Attorney General. Specifically, plaintiffs ask the Court to review its decision on the following judicial positions: 10th District, Divisions A and B, and 39th District, Division A; all judgeships in the First Circuit Court of Appeal; and the at-large judgeships in the Second and Third Circuits.[73]

The Court has again reviewed the record and finds that its decision which held that the judicial positions set forth in Part I of its October 22 order have been precleared by the Attorney General is correct for the

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73/ Plaintiffs also contend that this Court precleared judgeships in the 17th and 32d judicial districts even though there were no Section 5 objections made on those two districts. Whether there is an objection filed or not, the Court's decision that these judicial positions have been precleared by the Attorney General is correct.

reasons previously cited in this opinion. We also find that the Attorney General specifically precleared the division of the 10th and 39th Judicial Districts into two separate districts when he approved judicial positions for both districts. Finally, we conclude that when the Attorney General precleared Act 3 of the 1981 Louisiana Legislature on August 26, 1981, he expressly precleared the number of judges and divisions for each of the circuits.[74/]

The Court on its own motion does find that one judicial position which the Court initially found to be

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74/ The state's six page letter of July 29, 1981, to the Attorney General explained in detail the changes made by Act 3 of 1981. On page 4 of the letter, it is stated: "Prior law provided for alphabetical divisions (A, B, C, . . .) within each district of the First Circuit. New law provides the same for all court of appeal circuits." (emphasis in original).

unprecleared has in fact been expressly precleared by the Attorney General. This district is District 20, Division B. Exhibit D-4, which was filed in the record, clearly shows that the split of District 20 into two parishes and the creation of Division B was expressly submitted and approved by the Attorney General. Therefore, the Court hereby amends its October 22 order to delete District 20, Division B from the unprecleared list in Part II of the order. The Court orders this judicial position to be included in Part I of the October 22 order which sets forth precleared judicial positions.

Therefore, except as amended herein regarding District 20, Division B, plaintiffs' motion for clarification and reconsideration is denied.

V. PLAINTIFFS' MOTION FOR STAY AND INJUNCTION PENDING APPEAL

The final motion before the Court is plaintiffs' motion for a stay and injunction pending appeal. We deny this motion. The Court believes that, considering the facts of this case, it has issued appropriate orders in the exercise of its equitable jurisdiction in accordance with precedent and authority of the United States Supreme Court and other three-judge courts. The rights of all parties have been protected and the provisions of the Voting Rights Act of 1965 have been enforced.

Therefore, plaintiffs' motion for stay and injunction pending appeal is denied.

VI. CONCLUSION

The Court has given very careful consideration to the arguments of

all of the parties in this very difficult case. The Court believes the orders it has issued in this case are equitable under the facts of this case. At the same time, the Court must sound a very clear and direct warning to the State of Louisiana. If the State of Louisiana does not seek or otherwise obtain preclearance in accordance with the Voting Rights Act of 1965 of those judicial positions which this Court has found to be unprecleared, this Court **SHALL ENFORCE** its order requiring removal of judges from those unprecleared positions. While the Voting Rights Act of 1965 has been criticized and may be controversial, it is the law of this country until repealed by the Congress or found to be unconstitutional by the United States Supreme Court. As such, the Act shall be enforced by this Court.

This Court shall retain supervisory jurisdiction of this case for whatever further relief may be necessary or required.

Baton Rouge, Louisiana, October 31, 1990.

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

JANICE G. CLARK, ET AL

VERSUS

CHARLES "BUDDY" ROEMER, ET AL

CIVIL ACTION

NO. 86-435-A

RULING BY THREE JUDGE COURT ON MOTIONS

[Entered October 24, 1990]

There are two motions pending before the court.

I. Motion to Intervene

A motion to intervene has been filed on behalf of H. Michael Aaron who declares that he is a candidate for judge of the Family Court for the Parish of East Baton Rouge at the election presently scheduled for November 6, 1990.

Mover urges that he is entitled to intervene because a cancellation of the election date would adversely affect his candidacy. Although neither the motion nor the memorandum of law filed in support of the motion specify what issue mover desires to address, the court assumes that the motion is addressed to the recently filed motion by plaintiffs to enjoin both the elections ordered by the single-judge court and the elections ordered by the three-judge court. The motion by plaintiff to enjoin the elections will be considered infra. Plaintiffs argue that the date of November 6, 1990 and December 8, 1990 must first be submitted to the Attorney General for preclearance under Section 5 of the Voting Rights Act because the dates are not those regularly scheduled by state law.

This court finds that mover has no right to intervene under Rule 24(a), Fed. R. Civ. P. See Hall v. St. Helena Parish School Board, 287 F.2d 376 (5th Cir. 1961); Brumfield v. Dodd, 425 F.Supp. 528 (E.D. La. 1976). Neither are we convinced that permissive intervention should be allowed under Rule 24(b). See Hoots v. Commonwealth of Pa., 672 F.2d 1133 (3d Cir. 1982). The interests of this mover concerning the dates of the election are adequately protected by other parties, including the Governor of Louisiana, the Attorney General of Louisiana, the Secretary of State of Louisiana, the Louisiana District Judges Association, the Orleans Parish Judges Association, as well as the district judges of the Twenty-fourth Judicial District for the Parish of Jefferson, all

of whom are very interested in the dates of the election.

The motion for leave to intervene is hereby DENIED. Mover is, however, granted permission to file a brief as amicus curiae.

II. Motion to Enjoin At-large Elections for "Unprecleared Election Schedule"

By its orders of September 28, 1990 and October 2, 1990, the court ordered that elections go forward on November 6, 1990 and, if a run-off is necessary, on December 8, 1990. Plaintiffs take the position that before elections can be held for these judgeships, the state defendants must first submit the dates of the elections to the Attorney General for preclearance under Section 5 of the Voting Rights Act of 1965. The regularly scheduled primary

election date in Louisiana was October 6, 1990 and the regularly scheduled general election is November 6, 1990.

It is the position of plaintiffs that all elections scheduled for November 6 must be enjoined without regard to whether the office up for election has been precleared by the Attorney General already or not. Plaintiffs claim that because the election dates "reflect the policy choices of the elected offices of the State of Louisiana, they are voting changes that must be precleared."

Plaintiffs' argument is not convincing. It is clearly established that, "A decree of the United States District Court is not within the reach of Section 5 of the Voting Rights Act." Connor v. Johnson, 402 U.S. 690, 691, 91 S.Ct. 1760, 1762, 29 L.Ed.2d 268 (1971).

See also East Carroll Parish School Board v. Marshall, 424 U.S. 636, 96 S.Ct. 1083, 47 L.Ed.2d 296 (1976). The dates of the election were selected and ordered by the court itself, although counsel for all parties were allowed input. These election dates were not scheduled by the state; they were ordered by the three-judge court and the single-judge court, respectively, and the defendants are simply carrying out the orders of the court.

It is well established that a three-judge district court in exercising its duties under Section 5 of the Voting Rights Act determines: "(i) whether a change [is] covered by Section 5, (ii) if the change [is] covered, whether Section 5's approval requirements were satisfied, and (iii) if the requirements were not satisfied, what remedy [is] appropriate."

City of Lockhart v. United States, 460 U.S. 125, 129, 103 S.Ct. 98, 1001 n.3, 74 L.Ed.2d 863 (1983). The court has authority to consider equitable arguments put forth by the defendants or the plaintiffs only in the very limited context of fashioning an appropriate remedy. Section 5 contemplates injunctive relief, which is, by its nature, equitable. The Supreme Court has certainly indicated that a three-judge court has some limited discretion in fashioning a remedy by directing such courts to fashion "appropriate" remedies. See e.g., Perkins v. Matthews, 400 U.S. 379, 441, 91 S.Ct. 431, 441 (1971).

As will be set forth at length in the formal opinion which will be issued, this court has concluded that it would be inequitable to summarily turn out of office a host of Louisiana judges,

some of whom have been serving since 1968 or 1970 or 1974. The shock to the judicial system is simply not warranted, unless there are no other alternatives. As the court's order of October 22 indicates, the court has exercised its discretion by allowing the elections for non-precleared judgeships to proceed but allowing the successful candidates to take office only provisionally. That gives the state an opportunity to litigate its claim, if it desires, in the United States District Court for the District of Columbia and at the same time provides the judicial work force which the state needs. The order also provides that if the state declines to litigate or loses the case, the nonprecleared judgeships will terminate. As to the judicial offices which the court held in its order of October 22, 1990 to have

been precleared by the attorney general, it is the court's decision that these judgeships should be filled as rapidly as possible and with the least expense to the state. It is also desirable that, as nearly as may be, the established policy of the state to hold all judicial elections at the same time be observed. For all these reasons, and those to be set forth in the formal opinion, the court has exercised its discretion and has by its own authority ordered these election dates. The choice of election dates by a court must no more be precleared by the Attorney General than the court's choice of enjoining elections must be precleared by the Attorney General.

The motion to enjoin elections held pursuant to "unprecleared election schedule" is hereby DENIED both as to the

elections ordered by this three-judge court and by the single-judge court.

Baton Rouge, Louisiana, October 24, 1990.

/s/ W. Eugene Davis by JVP
W. EUGENE DAVIS
UNITED STATES CIRCUIT
JUDGE

/s/ John V. Parker
JOHN V. PARKER, CHIEF
JUDGE
MIDDLE DISTRICT OF
LOUISIANA

/s/ Frank J. Polozola
FRANK J. POLOZOLA
UNITED STATES DISTRICT
JUDGE
MIDDLE DISTRICT OF
LOUISIANA

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

JANICE G. CLARK, ET AL CIVIL ACTION

VERSUS NUMBER 86-435-A

CHARLES "BUDDY" ROEMER,
GOVERNOR OR LOUISIANA, ET AL

ORDER

[Entered October 22, 1990]

This matter is before the Court for a reconsideration of the prior orders issued by this Three Judge Court. Considering Brooks v. State Board of Elections, No. CV 288-146, 1989 W.L. 180759 (S.D. Ga. Dec. 1, 1989), modified, (S.D. Ga. May 29 & June 25, 1990) (Three-Judge Court), aff'd mem., (U.S. Oct. 15, 1990) (Nos. 90-272 & 90-332), and for more detailed reasons which shall be set

forth in an opinion to follow, we issue the following order:

I.

IT IS ORDERED, ADJUDGED AND DECREED that the election shall proceed as scheduled for judgeships individually precleared by the Attorney General or in which preclearance was not required because the judgeship predated the Voting Rights Act of 1965.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that in addition we have determined that when the Attorney General cleared statutes creating an ultimate number of judicial seats in a particular judicial district, that preclearance constituted approval of all judicial seats necessary to reach the ultimate number of judicial positions in that district. Therefore, we find that the

following positions in judicial districts of the State of Louisiana have been precleared in this manner by the Attorney General of the United States as required by Section 5 of the Voting Rights Act of 1965:

(1) DISTRICT COURTS

JDC	PARISH	DIVISION
1st	Caddo	F
4th	Morehouse & Ouachita	D
9th	Rapides	D E
10th	Natchitoches	A B
15th	Acadia, Lafayette & Vermillion	E F H I
16th	Iberia, & St. Martin	D
17th	Lafourche	A B C D

18th	Iberville, Point Coupee & West Baton Rouge	C
21st	Livingston, St. Helena & Tangipahoa	D
23d	Ascension, Assumption & St. James	C
24th	Jefferson	H I J K
27th	St. Landry	C
29th	St. Charles	C
32d	Terrebonne	C
39th	Red River	A

(2) COURTS OF APPEAL

CIRCUIT	DISTRICT	DIVISION
1st	1	All
1st	2	All
1st	3	All
2d	at large	at large
3d	at large	at large

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the elections for these

judgeships set for November 6, 1990 and December 8, 1990 SHALL PROCEED as scheduled.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any candidate who was elected in the October 6, 1990 election in these precleared judgeships shall be allowed to take the oath of office and serve the regular term of office.

II.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the following positions in judicial districts of the State of Louisiana have not been precleared by the Attorney General of the United States as required by Section 5 of the Voting Rights Act of 1965:

(1) DISTRICT COURTS

JDC	PARISH	DIVISION
4th	Morehouse & Ouachita	F
		G

6th	East Carroll, Madison & Tensas	B
14th	Calcasieu	E
		F
		G
		H
16th	Iberia, St. Martin & St. Mary	G
20th	East Feliciana & West Feliciana	B
21st	Livingston, St. Helena & Tangipahoa	F
22d	St. Tammany & Washington	G
24th	Jefferson	P
26th	Bossier & Webster	E
34th	St. Bernard	D
40th	St. John the Baptist	C

(2) COURTS OF APPEAL

All judgeships authorized by Act 8 of 1990 including:

(a) Second Circuit Court of Appeal, District 1, Division C;

(b) Second Circuit Court of Appeal, District 3, Division C.

III.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the following course of action shall be followed for those elections which have been held and which shall be held on November 6, 1990 and December 8, 1990 for those judgeships set forth in Paragraph II which have NOT been precleared by the Attorney General of the United States as required by Section 5 of the Voting Rights Act of 1965:

(1) Those persons elected as judges shall serve provisionally pending the further orders of this Court, and vested with all the power, authority and duties accorded by law.

(2) Within ninety days of the date of this order, the State of Louisiana shall either obtain preclearance of the said judgeships from

the Attorney General of the United States or shall file a suit for a declaratory judgment with the United States District Court for the District of Columbia under the provisions of 42 U.S.C. § 1973c.

(3) If the State of Louisiana files such a declaratory judgment, the incumbent judges may continue to serve in the unprecleared judgeships until one of the following events occurs:

(a) this order requiring preclearance is reversed by the United States Supreme Court;

(b) the State of Louisiana obtains a favorable declaratory judgment from the suit filed in the United States District Court for the District of Columbia;

(c) the Attorney General of the United States approves and preclears the legislation creating

the judicial seat in question;

(d) the Attorney General of the United States approves and preclears a new statutory scheme adopted by the State of Louisiana for the election of judges, and an election is conducted pursuant to that scheme.

(4) Should the event described in either subsections 3(a), (b), or (c) occur, these incumbent judges may remain in office and serve the remainder of their terms of office.

(5) Should the State of Louisiana fail to obtain a favorable declaratory judgment from the suit filed in the United States District Court for the District of Columbia, the incumbent judges in the unprecleared judgeships may remain in office for 150 days after the finality of the judgment in that case.

(6) Should the State of Louisiana fail to obtain preclearance from the Attorney General of the United States or fail to file a suit for a declaratory judgment with the United States District Court for the District of Columbia within the time period set forth in paragraph III(2) above, the incumbent judges in the unprecleared judgeships may remain in office for 150 days following the expiration of that time period.

(7) In the event any vacancy should occur in the unprecleared judgeships by reason of death, resignation or otherwise, such vacancy may be filled according to Louisiana law.

IV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the State of Louisiana shall be enjoined from conducting an

election or allowing any person to take the oath of office for the following judgeships:

(1) All judgeships authorized by act 801 of 1987 including:

(a) Third Circuit Court of Appeal, District 1, Division C;

(b) Third Circuit Court of Appeal, District 2, Division C;

(c) Third Circuit Court of Appeal, District 3, Division C.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any election set for November 6, 1990 or December 8, 1990 for judgeships created by Act 801 of 1987 shall be enjoined and cancelled until these judgeships are precleared. If preclearance is obtained, the State of Louisiana shall be required to reopen a qualification period for these judgeships.

V.

IT IS FURTHER ORDERED,ADJUDGED AND DECREED that all previous orders issued in this case which are inconsistent with this order are rescinded or modified in accordance with this order.

VI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction of this case for whatever further relief may be necessary or required.

Baton Rouge, Louisiana, October 22, 1990.

/s/ W. Eugene Davis by JVP
W. EUGENE DAVIS
UNITED STATES CIRCUIT JUDGE

/s/ John V. Parker
JOHN V. PARKER
UNITED STATES
DISTRICT JUDGE

/s/ Frank J. Polozola
FRANK J. POLOZOLA
UNITED STATES
DISTRICT JUDGE

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT

STATE OF LOUISIANA

JANICE G. CLARK, ET AL

Plaintiffs

CIVIL ACTION
NO. 86-435
SECTION "A"

VERSUS

CHARLES "BUDDY" ROEMER, GOVERNOR OF LOUISIANA, ET AL

Defendants

ORDER

[Entered October 2, 1990]

This matter having been submitted to the court on the motion of Charles E. "Buddy" Roemer, III, the Governor of Louisiana, in his official capacity for, and on behalf of, the State of Louisiana and the Louisiana District Judges Association, and, for the reasons

previously assigned in open court on September 28, 1990,

IT IS ORDERED, ADJUDGED AND DECREED that the injunction as issued in these proceedings on July 6, 1990 which prohibited the election of state judges in the following districts:

First Judicial District (Caddo Parish)

Fourth Judicial District (Ouachita and Morehouse Parishes)

Ninth Judicial District (Rapides Parish)

Fourteenth Judicial District (Calcasieu Parish)

Fifteenth Judicial District (Lafayette, Acadia and Vermilion Parishes)

Sixteenth Judicial District (Iberia, St. Mary and St. Martin Parishes)

Eighteenth Judicial District (Iberville, Pointe Coupee and West Baton Rouge Parishes)

Nineteenth Judicial District (East Baton Rouge Parish)

Twenty-Fourth Judicial District (Jefferson Parish)

Fortieth Judicial District (St. John the Baptist Parish)

Family Court for the Parish of East Baton Rouge

First Circuit Court of Appeal, District 2,

be and the same is hereby recalled and dissolved.

BE IT FURTHER ORDERED, ADJUDGED AND DECREED that qualifications for the office(s) of judge in each of these aforenamed districts shall occur on Wednesday, October 3rd, 1990, Thursday, October 4th, 1990, and Friday, October 5th, 1990, with the primary election therefore to occur at the time and on the date of the regular scheduled Louisiana general election on November 6, 1990 and a runoff election, if needed, to be held on December 8, 1990.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this election procedure is to be followed and shall occur notwithstanding any Louisiana statutory provision to the contrary.

That a supporting memorandum as required by the rules of this court be waived, but only in this specific instance

Baton Rouge, Louisiana.

/s/ John V. Parker
Chief Judge John V. Parker

October 2, 1990

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT

STATE OF LOUISIANA

JANICE G. CLARK, ORSCINI L. BEARD, EDDIE G. CRAWFORD, NORBERT C. RAYFORD, VOTER INFORMATION PROJECT, INC., LOUIS SCOTT, SYLVIA COOK, CONNIE SADLER, TOM NELSON AND ALBERT RICHARD

Plaintiffs

CIVIL ACTION
NO. 86-435
SECTION "A"

VERSUS

CHARLES "BUDDY" ROEMER, GOVERNOR OF LOUISIANA; WILLIAM J. GUSTE, JR., ATTORNEY GENERAL OF LOUISIANA; FOX McKEITHEN, SECRETARY OF STATE OF THE STATE OF LOUISIANA, IN THEIR OFFICIAL CAPACITIES AS REPRESENTATIVES OF THE STATE OF LOUISIANA

Defendants

ORDER

[Entered October 2, 1990]

The Court having heard arguments today, and for the reasons assigned orally (the Court reserving the

right to expand upon those oral reasons with written reasons):

IT IS ORDERED, ADJUDGED and DECREED that the plaintiffs' motion to enjoin the following judicial elections is denied to the extent that an injunction is sought on qualification of candidates or on enjoining the election. These judicial elections are:

First Judicial District,
Division F
Fourth Judicial District,
Divisions D, F, and G
Ninth Judicial District,
Divisions D and E
Fourteenth Judicial District,
Divisions E, F, G, and H
Fifteen Judicial District,
Divisions E, F, H, and I
Eighteenth Judicial District,
Division C
Twenty-Fourth Judicial
District, Divisions H, I, J,
K, and P
Fortieth Judicial District,
Division C

IT IS FURTHER ORDERED, ADJUDGED and DECREED that in the judicial districts just listed, qualification of

candidates for the office(s) of judge in each of these judicial districts shall occur during normal qualification hours of the Secretary of State of Louisiana on Wednesday, October 3, 1990, Thursday, October 4, 1990, and Friday, October 5, 1990 with the election(s) therefore to occur at the time and on the date of the regular scheduled Louisiana general election on November 6, 1990; a runoff election, if needed, shall be held on December 8, 1990.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that the results of these elections shall be promulgated and the winners certified in accordance with Louisiana law, but that any candidate who is certified the winner of any of these elections be and is enjoined from taking office pending further orders of this court.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that, pending further orders of this Court, the qualification of candidates for and the election for the First Circuit Court of Appeal, District 2, Division C shall be and is enjoined.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that this election procedure is to be followed and shall occur notwithstanding any Louisiana statutory provision to the contrary.

Baton Rouge, Louisiana, October 2, 1990.

JUDGE W. EUGENE DAVIS
UNITED STATES CIRCUIT
JUDGE
FIFTH CIRCUIT COURT
OF APPEALS

/s/ John V. Parker
JUDGE JOHN V. PARKER
CHIEF JUDGE
MIDDLE DISTRICT OF
LOUISIANA

/s/ Frank J. Polozola
JUDGE FRANK J. POLOZOLA
UNITED STATES
DISTRICT JUDGE
MIDDLE DISTRICT OF
LOUISIANA

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

JANICE G. CLARK, ET AL

VERSUS CIVIL ACTION

CHARLES "BUDDY" ROEMER, ET AL NO. 86-435-A

ORDER

[Entered September 28, 1990]

The court having heard arguments:

IT IS ORDERED, ADJUDGED and DECREED that the judicial elections referred to in Appendix A attached hereto shall be held as scheduled and the results promulgated and the winners certified in accordance with Louisiana law.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that any candidate who is certified the winner of any of the

above elections be and is enjoined from taking office pending further orders of this court.

Baton Rouge, Louisiana, September 28, 1990.

/s/ W. Eugene Davis
JUDGE W. EUGENE DAVIS
UNITED STATES CIRCUIT JUDGE

/s/ John V. Parker
JUDGE JOHN V. PARKER
CHIEF JUDGE
MIDDLE DISTRICT OF LOUISIANA

/s/ Frank J. Polozola
FRANK J. POLOZOLA
UNITED STATES DISTRICT JUDGE

APPENDIX "A"

What follows is a list of those judgeships for which elections should be enjoined in the wake of the September 17, 1990 letters from the Justice Department:[1/]

** The following were all the subject of the Justice Department's September 23, 1988 and May 12, 1989 objection letters, and the Justice Department's September 17, 1990 letter said it would not reconsider the previous objections:

District Courts

District	Division	Statute
6	B	Act 515 (1974)

1/ As noted in plaintiffs' previous filings, the plaintiffs are not seeking a Section 5 injunction against judgeships in districts where elections are already enjoined under Judge Parker's Section 2 Order.

[App. "A" to 9-28-90 order, continued]

16	D	Act 104 (1968) Act 56 (1984)
20	B	Act 34 (1981)
21	D	Act 9 (1974)
	F	Act 56 (1984)
23	C	Act 464 (1968)
27	C	Act 158 (1971)
29	C	Act 94 (1970)

Courts of Appeal

First Circuit, District 3	C	Act 114 (1975)
Second Circuit	At-Large	Act 114 (1975)
	At-Large	Act 801 (1987)*
Third Circuit	At-Large	Act 114 (1975)
Third Circuit, District 1	C	Act 801 (1987)*

[App. "A" to 9-28-90 order, continued]

Third Circuit, District 2	C	Act 801 (1987)*
Third Circuit, District 3	C	Act 801 (1987)*

All of the foregoing judgeships except those with an asterisk were filled by election even absent preclearance and most, if not all, are currently occupied by sitting judges. Those with an asterisk were enjoined prior to the initial election, and are vacant.

** In addition, elections for the following judgeships should be enjoined due to objections contained in the Justice Department's September 22, 1988 letter:

-- All judgeships in the 10th and 39th judicial districts inasmuch as the Department of Justice has objected to Act 635 (1979), which split the

[App. "A" to 9-28-90 order, continued]

former 10th judicial district, creating two districts -- the new 10th composed of Natchitoches Parish and the new 39th composed of Red River Parish.

-- All judgeships in the First Circuit Court of Appeal Districts 1 and 3 inasmuch as the Department of Justice has objected to Act 305 (1975), which adopted designated posts (divisions) for all judgeships in those districts. (The plaintiffs do not seek this relief under Section 5 with respect to the First Circuit, District 2, since sufficient relief already is being granted in the Section 2 component of this litigation).

The State of Louisiana requested reconsideration of the objection regarding the 10th and 39th judicial districts, but the Justice Department denied that request in its September 17,

[App. "A" to 9-28-90 order, continued]

1990 letter. No request for reconsideration was made with respect to the objection regarding judgeships in the First Circuit. Elections for all of the judgeships listed in this paragraph were held in prior years despite the absence of preclearance and most, if not all, are currently filled by sitting judges.

** Also, elections should be enjoined for the following judgeships that have recently been created by the Louisiana legislature, but were denied preclearance by the Department of Justice in its September 17, 1990 letter. These have yet to be filled by election:

District Courts

District	Division	Act
26	E	Act 174 (1989)

[App. "A" to 9-28-90 order, continued]

Courts of Appeal

Second Circuit, District 1	C	Act 8 (1990)

(Note: Act 8 of 1990 took the unprecleared at-large Second Circuit judgeship originally created by Act 801 of 1987 and allotted it to Division C of District 1 of the Second Circuit).

Second Circuit District 3	C	Act 8 (1990)

** Finally, elections should be enjoined for the following recently created judgeship which has been submitted by the State for preclearance, but which has not been precleared. It is the subject of a request by the Department of Justice to the State for more information.

District Courts

District	Division	Act
22	G	Act 8 (1990)

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT STATE OF LOUISIANA

JANICE G. CLARK, ET AL

VERSUS

CHARLES "BUDDY" ROEMER, ET AL

CIVIL ACTION

NO. 86-435-A

ORDER

[Entered September 27, 1988]

On August 29, 1988, the court issued an order enjoining primary and general elections scheduled for the Twenty-second Judicial District Court, Division "C"; Second Circuit Court of Appeal, at-large position; Third Circuit Court of Appeal, District 1, Division "C"; District 2, Division "C"; and District 3, Division "C". That order was based upon plaintiffs' motion brought pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. §1973c.

By letter dated September 23, 1988, signed by Mr. William Bradford Reynolds, Assistant Attorney General, the United States Attorney General interposed objections to the implementation of Act 801 of 1987 which created the four new judgeships in the Second and Third Circuit Courts of Appeal. Additionally, the United States interposed no objection to Act 23 of 1970 which had created Division "C", Twenty-second Judicial District Court.

The court, being aware of the fact that Act 801 and Act 23 had been submitted to the United States Attorney General, also authorized the Secretary of State to print all ballots for positions authorized by Act 23 and Act 801, and to mail out mail ballots and to deliver printed ballots to the several registrars of voters in the state.

Inasmuch as the United States Attorney General has now objected to the implementation of Act 801, the state defendants are enjoined from further conducting any election for judge, Second Circuit Court of Appeal, at-large and judge, Third Circuit Court of Appeal, District 1, Division "C", District 2, Division "C", and District 3, Division "C" which positions were created by Act 801. To that end the state defendants shall accomplish the following:

1. Upon the opening of each absentee ballot envelope, the parish board of election supervisors or the absentee ballot commissioners shall identify the ballot for the Court of Appeal judgeship but shall not examine for whom the voter voted. Each such absentee ballot shall immediately be placed in the envelope addressed to the Secretary of State of Louisiana labeled "Absentee Ballots, Judge, Court of Appeal." That envelope shall be returned to the Secretary of State and

shall remain sealed but shall be deposited by the Secretary of State with the Clerk of Court, United States District Court, Middle District of Louisiana.

2. The Commissioner of Elections shall delete from the voting machine ballots that portion of the ballot which relates to the election for Judge, for the Second Circuit Court of Appeal, at-large and Judge, Third Circuit Court of Appeal, District 2, Division "C", replacing the deleted portion with a piece of blank ballot stock.

3. The Secretary of State shall provide a sufficient number of "crack and peel" stickers to the Commissioner of Elections who shall transmit sufficient stickers to the Commissioners at each polling place, who shall apply the sticker over the portion of each sample ballot that relates to the candidates for Judge, Court of Appeal.

4. The Secretary of State shall certify that ballot, as altered pursuant to this order, is the correct and official ballot of the State of Louisiana.

5. With regard to the position of Judge, Third Circuit Court of Appeal, District 1, Division "C" and District 3, Division "C", the Secretary of State shall not certify the unopposed candidates as having been elected.

The order of this Court that enjoined the election for Judge, Twenty-second Judicial District Court, Division "C" is hereby vacated.

Baton Rouge, Louisiana, September 27, 1988.

/s/ W. Eugene Davis
W. EUGENE DAVIS,
UNITED STATES CIRCUIT JUDGE

/s/ John V. Parker
JOHN V. PARKER, CHIEF JUDGE
MIDDLE DISTRICT OF LOUISIANA

/s/ Frank J. Polozola
FRANK J. POLOZOLA,
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT STATE OF LOUISIANA

JANICE G. CLARK, ET AL

VERSUS

CHARLES "BUDDY" ROEMER, ET AL

CIVIL ACTION

NO. 86-435-A

ORDER

[Entered August 26, 1988]

This matter is before the court on a motion for preliminary and permanent injunction to enjoin the holding of elections presently scheduled for the October 1, 1988 primary. The motion is brought under Section 5 of the Voting Rights Act and alleges that two acts of the Louisiana Legislature which created additional judgeships have not been reviewed and "precleared" by the Attorney General of the United States and that no action has been filed in the United

States District Court for the District of Columbia. The parties have stipulated that the court may resolve the issue predicated upon the letter dated August 3, 1988 signed by Kenneth C. DeJean, Esq. on behalf of the Attorney General together with the attachments to that letter, all of which have been filed in the record.

According to the letter, the State of Louisiana has formally submitted Act 23 of 1970 which created Division "C" in the Twenty-second Judicial District Court and has also submitted Act 801 of 1987 which created one additional judgeship for the Second Circuit Court of Appeal and three additional judgeships for the Third Circuit Court of Appeal. The Attorney General of the United States, according to the attachment to Mr. DeJean's letter, on February 26,

1988, requested additional information from the State and the Attorney General has not yet acted. Mr. DeJean concedes that no action has been filed in the United States District Court for the District of Columbia.

Thus, Section 5 of the Voting Rights Act prohibits these measures from becoming effective and consequently, Section 5 prohibits the holding of an election under either statute.

Accordingly, the Governor, the Secretary of State, and all other State defendants are hereby enjoined from conducting any election for any position created by Act 23 of 1970 or Act 801 of 1987 until the Attorney General of the United States acts upon the pending request for "preclearance" or until an action is prosecuted in the district court for the District of Columbia.

The court is aware that an injunction has also issued under Section 2 of the Voting Rights Act and that the injunction therein issued will be reviewed by the Court of Appeals. Should Act 23 of 1970 and Act 801 of 1987 be "precleared" and should the Court of Appeals see fit to modify the injunction issued under Section 2 so as to permit the elections scheduled for the October 1, 1988 primary to proceed, it will be necessary that the ballots have already been printed. Accordingly, the Secretary of State is hereby specifically authorized to print all ballots for positions authorized by Act 23 of 1970 and Act 801 of 1987, to mail out mail ballots and to deliver printed ballots to the several registrars of voters in the State, pending action by the Court of Appeals and by the Attorney General of

the United States. This modification applies strictly to printing and delivery of the ballots, not conducting the elections.

Baton Rouge, Louisiana, August 26, 1988.

/s/ W. Eugene Davis
W. EUGENE DAVIS,
UNITED STATES CIRCUIT JUDGE

/s/ John V. Parker
JOHN V. PARKER, CHIEF JUDGE
MIDDLE DISTRICT OF LOUISIANA

/s/ Frank J. Polozola
FRANK J. POLOZOLA,
DISTRICT JUDGE, M.D.L.A.

U.S. Department of Justice
Civil Rights Division
Washington, D.C. 20530

Office of the Assistant
Attorney General

September 23, 1988

Kenneth C. DeJean, Esq.
Chief Counsel
P.O. Box 44005
Baton Rouge, Louisiana 70804

Dear Mr. DeJean:

This refers to Act 23, H.B. No. 315 (1970), which provides for an additional judgeship in the 22nd Judicial District and a special election therefor; Act 801, S.B. No. 270 (1987), which creates an additional judgeship for each of the three judicial districts in the Third Circuit Court of Appeals and an additional circuitwide judgeship in the Second Circuit Court of Appeals, and provides special elections therefor; and

Act 200, H.B. No. 451, (1988), which changes the special election date under Act 801 (1987), for the State of Louisiana submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission of Act 23 on August 23, 1988 and of Acts 801 and 200 on August 19, 1988. In accordance with your request, expedited consideration has been given these submissions pursuant to the Procedures for the Administration of Section 5 (28 C.F.R. 51.34).

This also refers to our letters of August 31, September 4, September 14, and September 29, 1987, which requested additional information concerning the voting changes relating to other judicial election districts as identified in

Attachment A for the State of Louisiana, submitted to the Attorney General on July 1, 2, 6 and 31, 1987, pursuant to Section 5. Our records indicate that we have not received your response with regard to these matters.

We have considered carefully the information you have provided, as well as information from the Census and other interested parties. In addition, we have reviewed the findings of the federal district court in Clark v. Roemer, No. 86-435-A (M.D. La., orders of August 10, 15, and 31, 1988), dealing with the election of judges in the State of Louisiana. We note the court's finding that the existing at-large method of election, with designated posts and a majority vote requirement, results in a violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973, in the Second

and Third Circuits, including each of their election subdistricts, and in each of the other judicial districts identified in Attachment A. The court did not, however, make a discrete finding of a Section 2 violation regarding the existing election system in the 22nd Judicial District. However, the court found that elections throughout the State of Louisiana and in each of its judicial districts were characterized by racially polarized voting.

With regard to the instant changes in the Second and Third Circuits and those identified in Attachment A, the state is seeking to add elective judgeship positions under an election system that has been found to violate Section 2 of the Voting Rights Act. Likewise, with regard to the proposed redistricting of the 10th Judicial

District, the resulting election method for the district is one which the court has found to violate Section 2. Thus, in the circumstances existing in Louisiana, these proposed judgeship positions and the submitted boundary line change cannot be implemented except in the context of a racially discriminatory election method.

With regard to the adoption of designated posts in the First Circuit, we note that the black proportion of the population in each of the three districts within the First Circuit is at a level that would permit black voters an opportunity to elect a candidate of their choice, absent anti-single-shot voting devices. In the context of racially polarized voting that exists in the area, the imposition of designated posts, which prevents minority voters from utilizing the technique of single-shot voting,

effects a retrogression in the position of minority voters within the meaning of Beer v. United States, 425 U.S. 130, 146 (1976) even aside from the court's finding in Clark that the implemented election system in District 2 and 3 of the First Circuit, including the use of the unprecleared numbered posts, violates Section 2 of the Voting Rights Act.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. In addition, a submitted change may not be precleared if its implementation would lead to a clear violation of Section 2 of the Voting Rights Act. See 28 C.F.R. 51.55(b). In light of these principles and the

considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the changes under Act 801 (1987) and Act 200 (1988), the proposed designated posts in the First Circuit, the proposed redistricting of the 10th Judicial District, and the other changes enumerated in Attachment A meet the Act's preclearance requirements. Therefore, on behalf of the Attorney General, I must object to the implementation of those changes.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United Sates District Court for the District of Columbia that the changes do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. In addition, Section

51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the implementation of the changes under Act 801 (1987) and Act 200 and the changes identified in Attachment A legally unenforceable. See also 28 C.F.R. 51.10.

With regard to the proposed change in the 22nd Judicial District, the Attorney General does not interpose any objection to the change in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such

change. In addition, as authorized by Section 5, the Attorney General reserves the right to reexamine this submission if additional information that would otherwise require an objection comes to his attention during the remainder of the sixty-day review period. See also 28 C.F.R. 51.41 and 51.43.

In interposing no objection to the additional judgeship in the 22nd Judicial District, we are not unmindful that the late submission of a proposed remedial single-member districting plan likely prevented the court from making a specific finding of a Section 2 violation in the 22nd Judicial District, based on the court's criteria for issuing its amended findings of fact. We note also that the court in Clark, although not finding a discrete Section 2 violation in the 22nd Judicial District or in other

challenged districts in which voting changes are pending our review, did find that the state's election method for judges produced a systemic violation of Section 2. In addition, and as noted earlier, the court recognized the existence of racial bloc voting in judicial elections throughout the state, including those in the 22nd Judicial District, and it is well recognized generally that the use of a majority vote requirement and anti-single-shot provisions, such as numbered posts, enhances the opportunity to discriminate against minority voters in an at-large electoral system characterized by racially polarized voting. Thornburg v. Gingles, 478 U.S. 30, 45 (1986) (citing S. Rep. No. 417, 97th Cong. 2d Sess. 28-29); see also City of Rome v. United States, 446 U.S. 156, 184 & n.19 (1980)

(citing U.S. Comm'n on Civil Rights, The Voting Rights Act: Ten Years After, 206-07 (1975)). In these circumstances, our review has raised concerns that the existing election method in the 22nd Judicial District, as well as in other multi-member judicial districts, may indeed violate Section 2, and attorneys in our Voting Section will continue to look at these issues to determine whether further action of that nature may be appropriate.

Finally, our understanding of the court's decision in Clark is that the state may hold scheduled elections on October 7 for any judicial position that pre-dates the Voting Rights Act or that has received the requisite Section 5 preclearance. The court has, however, directed the state to fashion a remedy consistent with the court's findings. As

we read those findings, preclearance of the additional judgeship in the 22nd Judicial District, or in any other district challenged in Clark, does not relieve the state of its responsibility to consider appropriate remedial adjustments in those districts, where such action is necessary to afford black voters an opportunity to participate on an equal basis with white voters and to elect candidates of their choice. Such adjustments may include not only the use of single-member districts but such other corrective measures as the use of limited or cumulative voting schemes and the elimination of restrictive election features, such as anti-single shot voting devices and the majority vote requirement, that impede minority participation.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the State of Louisiana plans to take regarding these matters. If you have any questions concerning this letter, you may feel free to call Lora L. Tredway, Section 5 Attorney-Reviewer in the Voting Section (202-724-8290).

Because the status of the submitted changes is at issue in Clark v. Roemer, supra, we are providing a copy of this letter to the court in that case.

Sincerely,

/s/Wm. Bradford Reynolds
Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

cc: Honorable John V. Parker
United States Chief District Judge

ATTACHMENT A

Judicial District Court Districts	Voting Changes
1st	Act 117 (1973), which creates an additional judgeship and a special election therefor
4th	Act 480 (1970), which creates an additional judgeship position
6th	Act 515 (1974), which creates an additional judgeship and a special election therefor
9th	Act 158 (1971), which creates an additional judgeship
	Act 19 (1974), which creates an additional judgeship and a special election therefor

Judicial District Court Districts	Voting Changes
	Act 515 (1974), which creates an additional judgeship and a special election therefor
10th	Act 635 (1979), which redistricts the boundaries of the district
14th	Act 40 (1979), which creates an additional judgeship and a special election therefor
	Act 332 (1975), which creates an additional judgeship and a special election therefor
	Act 322 (1980), which creates an additional judgeship

Judicial District Court Districts	Voting Changes
15th	Act 360 (1970), which creates an additional judgeship and a special election therefor
	Act 43 (1976), which creates an additional judgeship
	Act 322 (1980), which creates an additional judgeship
16th	Act 104 (1968), which creates an additional judgeship and a special election therefor
18th	Act 86 (1968), which creates an additional judgeship and a special election therefor
20th	Act 34 (1981), which creates an additional judgeship

Judicial District Court Districts	Voting Changes
21st	Act 9 (1974), which creates an additional judgeship and a special election therefor
23rd	Act 464 (1968), which creates an additional judgeship and a special election therefor
24th	Act 78 (1968), which creates an additional judgeship and a special election therefor
	Act 674 (1968), which creates an additional judgeship
	Act 503 (1974), which creates two additional judgeships and a special election therefor

Judicial District Court Districts	Voting Changes
27th	Act 158 (1971), which creates an additional judgeship and a special election therefor
29th	Act 94 (1970), which creates an additional judgeship
Orleans Parish Criminal District Court	Act 236 (1972), which creates an additional judgeship and a magistrate
	Act 143 (1975), which creates five additional judges and decreases terms from 12 to 6 years
Orleans Parish Civil District Court	Act 129 (1975), which creates five additional judgeships and decreases terms from 12 to 6 years

Judicial District Court Districts	Voting Changes
First Circuit, Districts 1, 2, and 3	Act 305 (1975), which adopts designated posts (divisions) for all judgeships
First Circuit, District 2 and 3	Act 114 (1975), which creates an additional judgeship in each district and special election therefor and provides an implementation schedule
Second Circuit	Act 114 (1975), which creates an additional circuitwide judgeship
Third Circuit	Act 114 (1975), which creates an additional circuitwide judgeship

U.S. Department of Justice
Civil Rights Division
Washington, D.C. 20530

Office of the Assistant
Attorney General

May 12, 1989

Kenneth C. DeJean, Esq.
Chief Counsel
P.O. Box 44005
Baton Rouge, Louisiana 70804

Dear Mr. DeJean:

This refers to Act No. 235, H.B. No. 739 (1970), which creates an additional judgeship (Division J) for the Orleans Parish Civil District Court, and Act No. 56, H.B. No. 477 (1984), which creates two additional judgeships (Divisions F and G) for the 4th Judicial District and one additional judgeship for the 12th Judicial District (Division B), the 16th Judicial District (Division G), and the 21st Judicial District (Division F); recodifies the creation of the 40th Judicial District from the 29th Judicial

District, and the transfer of two judgeship positions from the 29th Judicial District to the 40th Judicial District; designates the two judgeship positions in the 40th Judicial District as Divisions A and B, and designates the three judgeship positions in the 29th Judicial District as Divisions C, D, and E; and provides for the implementation of the new 29th and 40th Judicial Districts and the election of the five judgeship positions from the respective districts in the November 1984 general election, for the State of Louisiana, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission of Act No. 235 on March 13, 1989 and of Act No. 56 on March 14, 1989.

To the extent that the provisions of Act No. 56 (1984) effect a change in the 12th Judicial District, the Attorney General does not interpose any objection to the change in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. See also 28 C.F.R. 51.41.

With respect to the remaining changes, however, we reach a different conclusion. We have considered carefully the information you have provided, as well as information from the Census and other interested parties and, most importantly, the findings of the federal district court in Clark v. Roemer, No. 86-453-A (M.D. La. orders of August 10,

15, and 31, 1988), dealing with the election of judges in the State of Louisiana. The court in Clark found that the existing at-large method of election, with designated posts and a majority vote requirement, results in a violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973, in the 4th, 16th, 21st, 29th, and 40th Judicial Districts and the Orleans Parish Civil District Court district.

Thus, as was true of the judgeship positions to which an objection was interposed in our letter of September 23, 1988, the statutes here seek, inter alia, to add or implement elective judgeship positions under an election system that has been found to violate Section 2 of the Voting Rights Act in the 4th, 16th, 21st, 29th, and 40th Judicial Districts and the Orleans Parish Civil

District Court district. (A copy of our September 23, 1988 objection letter is enclosed.) I note, too, that among these changes is a judgeship (Division C in the 29th Judicial District), the initial creation of which was also the subject of the Attorney General's September 23, 1988, objection regarding Act No. 94 (1970), and the initial creation of the Division J judgeship for the Orleans Parish Civil District Court, a position which was the subject of the objection interposed on September 23, 1988, with respect to Act No. 129 (1975).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. In addition, a submitted change

may not be precleared if its implementation would lead to a clear violation of Section 2 of the Voting Rights Act. See 28 C.F.R. 51.55(b). In light of these principles and the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the provisions of Act No. 235 (1970), which creates an additional judgeship position for the Orleans Parish Civil District Court, and the provisions of Act No. 56 (1984) with respect to the judgeship positions in the 4th, 16th, and 21st Judicial Districts, all to be implemented under an at-large system with designated posts and a majority vote requirement, meet the Act's preclearance requirements. Therefore, on behalf of the Attorney General, I must object to the implementation of these changes. I also must object to the

implementation of Act No. 56 (1984) insofar as it seeks to implement changes to which we interposed an objection on September 23, 1989, with regard to the 29th and 40th Judicial Districts.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the changes do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the

objected-to provisions of Act No. 235 (1970) and Act No. 56 (1984) legally unenforceable. See also 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the State of Louisiana plans to take regarding these matters. If you have any questions concerning this letter, you may feel free to call Lora L. Tredway, Section 5 Attorney-Reviewer in the Voting Section (202-724-8290).

Because the status of the submitted changes is at issue in Clark v. Roemer, supra, we are providing a copy of this letter to the court in that case.

Sincerely,

/s/ James P. Turner
James P. Turner
Acting Assistant Attorney General
Civil Rights Division

cc: Honorable John V. Parker
United States Chief District Judge

U.S. Department of Justice
Civil Rights Division
Washington, D.C. 20530

Office of the Assistant
Attorney General

September 17, 1990

Cynthia Y. Rougeou, Esq.
Assistant Attorney General
P.O. Box 94125
Baton Rouge, Louisiana 70804-9125

Dear Ms Rougeou:

This refers to your request that the Attorney General reconsider and withdraw the September 23, 1988, and May 12, 1989, objections under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.c. 1973c, to the following voting changes for the State of Louisiana:

> Orleans Parish Criminal District Court: Act 236 (1972), which creates an additional judgeship and a magistrate, and Act 143 (1975), which creates five additional judges and decreases terms from twelve years to six years;

> Orleans Parish Civil District Court: Act 235 (1970), which creates an additional judgeship position (Division J), and Act 129 (1975), which creates five additional judgeships and decreases terms from twelve years to six years.

We received your requests on June 19 and 26 and August 3, 1990; supplemental information was received July 12 and 17, 1990.

This also refers to Act No. 8, S.B. No. 345 (1990), to the extent that it creates the thirteenth and fourteenth at-large judgeships (Divisions M and N) for the Orleans Parish Civil District Court; and provides an implementation schedule therefor for the State of Louisiana, submitted to the Attorney General pursuant to Section 5. We received your submission on June 19, 1990; supplemental information was received July 12 and 17, 1990.

At the outset, we note that when the state originally submitted Acts 129 and 143 (1975), the submissions characterized the voting changes as an increase from five to ten judgeship positions for both the civil and criminal district courts in Orleans Parish. Although we asked for clarification of the voting changes effected by these statutes, we have not received your response. Our further analysis, however, indicates the following:

(1) Act 129 recodifies ten judgeship positions, eight of which received the requisite Section 5 preclearance in 1986. Accordingly, the effect of the September 23, 1988, objection applied only to the tenth judgeship position (Division J) for the Orleans Parish Criminal District Court, a position that was initially

created under Act 235 (1970) and recodified by Act 129 (1975).

(2) Act 143 (1975) recodifies ten judgeship positions, seven of which antedate the state's coverage under Section 5. Accordingly, the effect of the September 23, 1988, objection to Act 143 (1975) applied only to three judgeship positions for the Orleans Parish Criminal District Court.

We have carefully reviewed the information you have provided, as well as comments and information from other sources and interested parties. Our analysis indicates that the changes do not have the purpose and will not have the effect of discriminating on the basis of race or color and that implementation of the changes will not lead to a clear violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973. Accordingly,

the objections interposed September 23, 1988, and May 12, 1989, to the specified changes for the Orleans Parish Civil and Criminal District Courts are hereby withdrawn. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48 and 51.55).

With regard to the changes under Act 8 (1990) for the Orleans Parish Civil District Court, the Attorney General does not interpose any objections to the changes in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See 28 C.F.R. 51.41.

Sincerely,

/s/ John R. Dunne
John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice
Civil Rights Division
Washington, D.C. 20530

Office of the Assistant
Attorney General

September 17, 1990

Cynthia Y. Rougeou, Esq.
Assistant Attorney General
State of Louisiana
P.O. Box 94125
Baton Rouge, Louisiana 70804-9125

Dear Ms. Rougeou:

This refers to your request that the Attorney General reconsider and withdraw the September 23, 1988, and May 12, 1989, objections under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to the voting changes identified in Attachment A for the State of Louisiana. We received your requests on June 19 and 26 and August 10, 1990; supplemental information was received July 12 and 17, 1990.

This also refers to the voting changes identified in Attachment B for the State of Louisiana, submitted to the Attorney General pursuant to Section 5. We received your submission of Act 8 (1990) on June 19, 1990; supplemental information concerning those changes was received June 26 and July 12 and 17, 1990. We received the information to complete your submission of the remaining changes identified in Attachment B on July 17, 1990.

At the outset we begin with a recitation of some of the events which have preceded our review of all the voting changes which are before us today because those events play an important part in our consideration of these matters. You may recall that in 1987, we sent the State a number of letters requesting information concerning

numerous voting changes within judicial election circuits and districts in Louisiana, including a request that the State respond to allegations that the method of electing trial and appellate court judges discriminated against minority voters. The State, however, failed to respond to our requests.

Meanwhile, in 1988, the court in Clark v. Edwards -- a suit brought in 1986 by private plaintiffs challenging the method of electing judges in Louisiana -- found that the method of electing trial and appellate court judges produced a "systemic" violation of Section 2 of the Voting Rights Act. By the time of the court's 1988 decision, the State still had not supplied us with the additional information we needed to analyze the voting changes in judicial circuits and districts then pending

before us. Consequently, we used the record and findings from the Clark lawsuit to analyze the voting changes that were then pending before us for Section 5 review. On September 23, 1988, an objection was interposed under Section 5 of the Voting Rights Act.

In 1989, the State again submitted voting changes to us for Section 5 review and, there again, sought Section 5 preclearance of voting changes in judicial circuits and districts that had been found by the court in Clark to be racially discriminatory or had otherwise been the subject of the Section 5 objection interposed in 1988. Thus, on May 12, 1989, a Section 5 objection was interposed to the implementation of those changes.

Later that year, in the summer of 1989, the State adopted a new election

scheme, intended to remedy both the Section 2 violations found by the Clark court and the Section 5 objections interposed by the Attorney General in 1988 and 1989. However, because the proposed system created new senior judgeship positions in an apparent effort to accommodate and protect incumbent judges who might otherwise lose their seats if a racially fair election scheme were put in place, it required the approval of the voters in a state-wide referendum. As you know, that proposed scheme was disapproved by the voters in a November 1989 referendum.

Remedial proceedings in the Clark lawsuit were held earlier this year and those proceedings culminated in additional findings from the court. Clark v. Roemer, No. 86-435 (M.D. La., Orders of June 12 and July 6, 1990). On

the basis of those findings alone, the State now seeks reconsideration of the previously interposed objections, as well as Section 5 preclearance of other voting changes which were either never before the court in the Clark litigation or were otherwise not before that court in the same circumstances as they are before us under Section 5. These include the 10th, 24th, 26th and 40th Judicial Districts, and the 2nd and 3rd Circuit Courts of Appeal. With regard to these judgeship positions and the proposed method of election therefor, we find the Clark decision to be inapposite because it pertains to factual circumstances in a judicial district different from the judicial district now before us for Section 5 review.

In that regard, we note that the differing factual circumstances are

not insignificant. For example, one aspect of the Clark litigation involved a challenge to the method of electing judges in the 26th District. Because the State had not obtained Section 5 preclearance of the creation of a fifth judgeship in that District, the court in Clark examined the evidence in the context of four existing judgeships. Because the State has submitted to us a proposal to add a fifth judgeship to the 26th District, however, we are reviewing the method of electing judges in that district as it would exist if five judges were being elected. This distinction is critical because the Clark court found that a sample single-member district drawn in that District by private plaintiffs did not satisfy the requirement under Thornburg v. Gingles, 478 U.S. 30 (1986), that the minority

group be shown to be sufficiently large and geographically compact to constitute a majority in a single-member district. As a result, though the at-large multimember structure in the 26th District now has been found by the court in Clark not to violate Section 2 because of that finding, the court properly made no determination with regard to the method of election if five judges were to be elected from that district.

Another example of how the facts and circumstances before us differ from those which were before the court in Clark is in the 2nd Circuit Court of Appeal. In the 2nd Circuit, the claims before the Clark court involved a challenge to a mixed election system for seven judges, in which one judge was elected at large circuitwide and six judges were elected from three double-

member districts. We, however, are reviewing the creation of additional judgeship positions for the 2nd Circuit in the context of proposed changes to the electoral structure: first, to an interim scheme of one circuitwide position, one double-member district and two triple-member districts; and, second, to an election scheme that subsequently will be comprised of three triple-member districts with at-large elections by designated posts, staggered terms, and majority vote. Similarly, as to the 3rd Circuit, the Clark litigation involved a challenge to a scheme of three at-large circuitwide positions and three double-member districts, while we have been asked to assess the creation of additional judgeship positions in the context of an electoral structure that provides for three at-large circuitwide

positions and three triple-member districts.

The fact, then, that the Clark court has vacated some of its findings as to a violation under Section 2 does not in and of itself afford a basis for withdrawing the objection under Section 5 to the voting changes involved. Indeed, during our reconsideration of the objected-to voting changes and our review of the additional voting changes that you have submitted, you have provided us with additional information concerning the voting changes and judicial districts at issue by incorporating information contained in certain Section 5 submissions that you made in 1989 and in response to our requests during the current review period. Much of the information does not appear to have been before the court in the Clark case. For

example, in analyzing voting patterns to determine whether black voters are politically cohesive and whether whites vote sufficiently as a bloc usually to defeat the choice of black voters, the court in several instances did not have the benefit of any data concerning parishwide election contests or data by parish for contests involving a number of parishes. We have analyzed such data, and our analysis indicates a significant degree of racially polarized voting in the districts at issue. Also, we have been able to analyze information that was not before the court concerning the racial identity of federally-registered voters, as well as demographic and voting information concerning modifications to alternative election schemes that demonstrate the geographical

concentration of black persons in certain judicial districts.

Nor can we overlook the fact that in the face of findings of a systemic Section 2 violation by the Clark court in 1988, and notwithstanding the interposition of far-reaching Section 5 objections in 1988 and 1989, the State has failed to adopt a racially fair election system for its trial and appellate court judges even though the Clark court has given the State ample opportunity to do so. While, as noted above, the State did propose a new election scheme in 1989, it did so in a way which was intended also to protect incumbent judges. It is also particularly telling that there is nothing in Louisiana law we are aware of which would prevent the State from simply adopting a racially fair election scheme

without incorporating referendum requiring provisions such as that connected with the earlier proposal aimed at current officeholders. Thus, the State's failure and refusal to adopt any remedial measures without also seeking to protect incumbents, the vast majority of whom are white, would appear to be elevating the State's concern for protecting white incumbents over the vindication of minority voting rights.

It is also significant that in several judicial districts, the State has available to it any number of alternative election schemes in which black voters clearly would have the opportunity to elect candidates of their choice. Yet, the State has not adopted any of these alternatives. For example, with regard to the proposed redistricting of the 10th District, we note that the State proposes

to carve out one parish in order to create a new single-member judicial district, the 39th District, which has a 36.4 percent black population. The State thus chose to divide the 10th District in a manner that created one majority-white, single-member district, even though a single-member judicial district could be created which would have a substantial black-majority population. While we are cognizant that the proposed boundary lines apparently are based on parishes as the basic building blocks, these lines are not jurisdictional in nature but serve merely to outline the boundaries of the districts for election purposes. Accordingly, strict adherence to this criterion results in the dilution of a cohesive black population within the proposed new districts. Moreover, the State has deviated from this criterion in

devising the districts of the 5th Circuit Court of Appeal which, inexplicably, the state has chosen not to do with regard to the proposed 10th and 39th Districts.

Similarly, with regard to the 2nd Circuit Court of Appeal, which has a 34.2 percent black population, there are alternatives for electing the proposed nine judges in which black voters would have a realistic opportunity to elect candidates of their choice. Also, with regard to the 3rd Circuit Court of Appeal, which has a 23.7 percent black population, available alternatives for the proposed twelve judges would afford black voters the opportunity to elect candidates of their choice. As noted in our 1988 objection letter, such remedial alternatives would not necessarily require the State to draw single-member districts in every instance since, in a

number of areas, the State could retain the multimember system utilizing limited or cumulative voting and abandoning the use of the racially discriminatory features such as numbered posts and majority vote which enhance dilution in those circuits.

In 1988, the Clark court admonished the State to "revise the [judicial election] system- to cast about the alternative procedures under which black voters would have a better chance to elect judicial candidates of their choice." Clark v. Edwards, 725 F.Supp. 285 (M.D. La. 1998). So too, in 1988, we informed the State it had a responsibility to consider appropriate remedial adjustments to afford black voters an opportunity to participate on an equal basis with white voters and to elect candidates of their choice.

Notwithstanding these suggestions, the State has steadfastly adhered to the racially discriminatory multimember scheme and has resisted efforts in the Clark case to create single-member districts. Yet, as noted earlier, single-member districts are not the only available remedy. Indeed, our September 23, 1988 letter expressly observed that other corrective measure were available to the State, such "as the use of limited or cumulative voting schemes and the elimination of restrictive election features, such as anti-single shot voting devices and the majority vote requirement, that impede minority participation." The State has chose not to avail itself of such remedial options.

Under Section 5 of the Voting Rights Act, the submitting authority has

the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. In satisfying its burden, the submitting authority must demonstrate that the choices underlying the proposed change are not tainted, even in part, by an invidious racial purpose; it is insufficient simply to establish that there are some legitimate, nondiscriminatory reasons for the voting change. See Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-66 (1977); City of Rome, supra, at 172; Busbee v. Smith, 549 F. Supp. 494, 516-17 (D.D.C. 1982); aff'd, 459 U.S. 1166 (1983). While we do not in any way question the State's need for or purpose in creating new judgeship positions, we do find ourselves unable to

conclude that the State has carried its burden of showing the absence of the proscribed purpose in its insistence on maintaining and expanding the existing dilutive system for electing candidates to those positions, a system that has been found by the court, or our analysis, to be violative of Section 2 of the Voting Rights Act. See, e.g., 28 C.F.R. 51.55(b). Therefore, on behalf of the Attorney General, I must continue the objection to the implementation of the changes enumerated in Attachment A and object to the changes enumerated in Attachment B.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United states District Court for the District of Columbia that the changes do not have the purpose and

will not have the effect or result of denying or abridging the right to vote on account of race or color. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objections. However, until the objections are withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objections by the Attorney General is to continue the legal unenforceability of the changes identified in Attachments A and B. See also 28 C.F.R. 51.10.

Because this matter remains pending before the court in Clark, we are sending a copy of this letter to the court and counsel of record in that case.

Sincerely,

/s/ John R. Dunne
John R. Dunne
Assistant Attorney General
Civil Rights Division

cc: Honorable John V. Parker
Chief Judge, United States District Court

Michael M. Rubin, Esq.
Fred J. Cassibry, Esq.
Robert G. Pugh, Esq.
Kenneth C. DeJean, Esq.
John N. Kennedy, Esq.
Jack C. Benjamin, Esq.
George A. Blair, III, Esq.
Anthony Skidmore, Esq.
Robert P. McLeod, Esq.
Harry Rosenberg, Esq.
Ernest L. Johnson, Esq.
Robert B. McDuff, Esq.
Ulysses Gene Thibodeaux, Esq.

ATTACHMENT A

Judicial District Court Districts	Objected-to Voting Changes
6th	Act 515 (1974), which creates an additional judgeship and a special election therefor
10th	Act 635 (1979), which redistricts the boundaries of the district
16th	Act 104 (1968), which creates an additional judgeship and a special election therefor
	Act 56 (1984), which creates an additional judgeship (Division G)
-20th	Act 34 (1981), which creates an additional judgeship
21st	Act 9 (1974), which creates an additional judgeship and a special election therefor
	Act 56 (1984), which creates an additional judgeship (Division F)

23rd	Act 464 (1968), which creates an additional judgeship and a special election therefor
24th	Act 78 (1968), which creates an additional judgeship and a special election therefor
	Act 674 (1968), which creates an additional judgeship
	Act 503 (1974), which creates two additional judgeships and the special elections therefor
27th	Act 158 (1971), which creates an additional judgeship and a special election therefor
29th	Act 94 (1970), which creates an additional judgeship
	Act 56 (1984), which recodifies the additional judgeship under Act 94 (1970)

Circuit Courts of Appeal	Objected-to Voting Changes
First Circuit Districts 2 and 3	Act 114 (1975), which creates an additional judgeship in each district and special election therefor and provides an implementation schedule
Second Circuit	Act 114 (1975), which creates an additional circuitwide judgeship
	Act 801 (1987), which creates an additional circuitwide judgeship and special election therefor
Third Circuit	Act 114 (1975), which creates an additional circuitwide judgeship
Third Circuit, Districts 1, 2, and 3	Act 801 (1987), which creates an additional judgeship in each district and special elections therefor
	Act 200 (1987), which changes the special election dates under Act 801 (1987)

ATTACHMENT B

Judicial Districts	Voting Changes
24th	Act 8 (1990), which creates an additional (sixteenth) judgeship
26th	Act 174 (1989), which creates an additional judgeship
40th	Sections 3(A) and 3(B) of Act 611 (1989) and Act 608 (1989), which create an additional judgeship position (Division C)
2nd Circuit Court of Appeal	Act 8 (1990), which creates a ninth judgeship position to be elected by designated Division C in 2nd Circuit District 3; provides for a change in method of election for 2nd Circuit judges from two elected at-large circuitwide and two elected from each district by designated divisions to three elected from each district by designated divisions, except as specified for the incumbent in

	the at-large position to be converted to the Division C position of Second Circuit District 2; provides that the judgeship position created by Act 801 (1987) will be elected as the designated Division C position from 2nd Circuit District 1; and provides an implementation schedule therefor

U.S.Department of Justice
Civil Rights Division
Washington, D.C. 20530

Office of the Assistant Attorney General

October 9, 1990

Cynthia Y. Rougeou, Esq.
Assistant Attorney General
P.O. Box 94125
Baton Rouge, Louisiana 70804-9125

Dear Ms. Rougeou:

This refers to your request that the Attorney General reconsider the September 23, 1988, objection under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to the voting changes identified in Attachment A for the State of Louisiana. We received your request on August 10, 1990.

Under the Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, an objection shall be withdrawn "if the Attorney General is satisfied that the change does not have

the purpose and will not have the effect of discriminating on account of race, color, or membership in a language minority group." 28 C.F.R. § 51.48(b). In its request for reconsideration the State of Louisiana has offered no new information or arguments to show that the electoral method by which its additional judges will be elected is not racially discriminatory. Rather, it appears that the State seeks a clarification of the reach of the Attorney General's objection.

In that regard, we iterate here what we sought to make clear in our September 23, 1988, objection letter, that our concerns under Section 5 went to the proposed method of electing judges and not to the number of judges per se. As we have suggested previously on a number of occasions, adoption by the

State of a racially fair election scheme would provide an appropriate basis for withdrawing the objection. Until such time as the objection is withdrawn, however, the State may not lawfully implement any part of the process for electing those judicial positions which are the subject of outstanding Section 5 objections. See NAACP v. Hampton County Election Commission, 460 U.S. 166 (1985).

Under these circumstances, then, we see no basis for altering our earlier conclusions in this matter. Accordingly, on behalf of the Attorney General, I must decline to withdraw the September 23, 1988, objection.

Of course, in making this determination, we are cognizant of the recent decision of the Fifth Circuit Court of Appeals in LULAC v. Mattox, No. 90-8014 (5th Cir. September 28, 1990) (en

banc) and we are studying the Court's decision in that case to determine how, if at all, it may impact upon our enforcement responsibilities under the Voting Rights Act. However, we feel a responsibility to point out that we do not presently see that decision as immediately affecting the previously interposed objections to judicial elections in Louisiana.

Sincerely,

/s/ John R. Dunne
John R. Dunne
Assistant Attorney General
Civil Rights Division

ATTACHMENT A

Judicial District Court Districts	Voting Changes
1st	Act 117 (1973), which creates an additional judgeship and a special election therefor
4th	Act 480 (1970), which creates an additional judgeship position
9th	Act 19 (1974), which creates an additional judgeship and a special election therefor
14th	Act 40 (1967), which creates an additional judgeship and a special election therefor
	Act 332 (1975), which creates an additional judgeship and a special election therefor
	Act 322 (1980), which creates an additional judgeship
15th	Act 360 (1970), which creates an additional judgeship and a special election therefor
	Act 43 (1976), which creates an additional judgeship
	Act 322 (1980), which creates an additional judgeship
18th	Act 86 (1968), which creates an additional judgeship and a special election therefor

U.S. Department of Justice
Civil Rights Division
Washington, D.C. 20530

Office of the Assistant
Attorney General

November 20, 1990

Cynthia Young Rougeou, Esq.
Assistant Attorney General
P.O. Box 94125
Baton Rouge, Louisiana 70804-9125

Dear Ms. Rougeou:

This refers to Act No. 8, S.B. No. 345 (1990), which creates a seventh at-large judgeship position (Division G) for the 22nd Judicial District in the State of Louisiana, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Supplemental information was received on November 5 and 8, 1990.

We have carefully considered the information you have provided, as well as comments and information from the

Bureau of Census and other interested parties. At the outset, we note that the state proposes to elect this position under the existing at-large/designated post system with a majority vote requirement and, thus, its implementation serves as an expansion of that system. We further note that the provisions of Act 8 (1990) were adopted in the context of the concerns expressed in our September 23, 1988, letter to the state, in which we interposed Section 5 objections to the creation of numerous additional judgeship positions, although we precleared the creation of a sixth judgeship position (Division C) for the 22nd Judicial District.

In that letter we advised the state that our review of the sixth judgeship position in the 22nd Judicial District had "raised concerns" that the

at-large/designated post/majority vote election method may well have violated Section 2 of the Voting Rights Act, 42 U.S.C. 1973. We explained how it is generally well recognized that the use of a majority vote requirement and anti-single-shot voting requirements, such as designated posts, enhance the opportunity to discriminate against minority voters in an at-large electoral system characterized by racially polarized voting. We noted that the court in Clark v. Roemer, No. 86-435-A (M.D. La.), indeed had found the existence of racially polarized voting in the 22nd Judicial District.

Furthermore, in our September 23, 1988, letter, we explicitly advised the state that preclearance of the sixth judgeship position did not "relieve the state of its responsibility

to consider appropriate remedial measures" in any judicial district where "such action is necessary to afford black voters an opportunity to elect candidates of their choice." We suggested that such adjustments might include the use of single-member districts or "other corrective measures" (e.g., limited or cumulative voting schemes) and "the elimination of restrictive election features, such as anti-single-shot voting devices and the majority vote requirement, that impede minority participation."

Our analysis indicates, first of all, that the addition of a seventh judgeship position to be elected under the at-large/designated post / majority-vote system makes this most recent expansion of that system an even clearer violation of Section 2 and, secondly,

that the state has taken no measures to ensure that the election method in the 22nd Judicial District affords black voters an opportunity equal to that of white voters to elect candidates of their choice to any of the judicial positions in the district. Rather, the state has merely expanded an election system that appears to deny black voters such an opportunity, and has done so in apparent disregard of the wishes of black citizens and of the concerns raised by our September 23, 1988, letter.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R.

51.52). In addition, under our guidelines a submitted change may not be precleared if its implementation would lead to a clear violation of Section 2 of the Act. See also 28 C.F.R. 51.55. As we advised the state on September 17, 1990, while we do not in any way question the state's need for creating new judgeship positions, we do find ourselves unable to conclude that the state has carried its burden of showing the absence of proscribed purpose in its insistence on maintaining and expanding an election system which does not afford black voters a realistic opportunity to elect their preferred candidates. In light of all the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the state has satisfied its Section 5 burden with regard to the seventh judgeship position

in the 22nd Judicial District. Therefore, on behalf of the Attorney General, I must object to Act 8 (1990), to the extent that it requires implementation of the seventh judicial position (Division G) under the existing at large/designated post/majority-vote election system in the 22nd Judicial District.

We hasten to add, however, that we have noted your argument for Section 5 preclearance based on the decision in League of United Latin American Citizens Council No. 4434 v. Clements (LULAC), No. 90-8014 (5th Cir. Sep. 28, 1990) (en banc), in which the court held that the Section 2 results standard does not apply to judicial election systems. The court, however, expressly recognized that "Section 5 of the Act applies to state judicial elections," id. slip op. at 20,

and until this matter is clarified further by the courts, we see no basis for altering our Section 5 procedural requirements insofar as they relate to Section 2.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the change does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the further expansion of the at-large / designated post/ majority-vote

election system through the additional judgeship under Act 8 (1990) for the 22nd Judicial District continues to be legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the State of Louisiana plans to take with regard to this matter. If you have any questions, feel free to call Ms. Lora L. Tredway (202-307-2290), an attorney in the Voting Section.

Because this matter remains pending before the court in Clark, we are sending a copy of this letter to the court and counsel of record in that case.

Sincerely,

/s/ John R. Dunne
John R. Dunne
Assistant Attorney General
Civil Rights Division

cc: Honorable John V. Parker
Chief Judge, United States District Court

Michael M. Rubin, Esq.
Fred J. Cassibry, Esq.
Robert G. Pugh, Esq.
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Harry Rosenberg, Esq.
Ernest L. Johnson, Esq.
Robert B. McDuff, Esq.
Ulysses Gene Thibodeaux, Esq.

U.S. Department of Justice
Civil Rights Division
Washington, D.C. 20530

Office of the Assistant
Attorney General

November 20, 1990

Cynthia Y. Rougeou, Esq.
Assistant Attorney General
P.O. Box 94125
Baton Rouge, Louisiana 70804-9125

Dear Ms. Rougeou:

This refers to the September 23, 1988, objection, under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to Act 515 (1974), which creates an additional judgeship (Division B) and provides for a special election therefor in the 6th Judicial District of the State of Louisiana.

As you know, on September 17, 1990, the Attorney General declined to withdraw the objection, based on the information that was then available.

Since that time, we have received and carefully reviewed additional factual information relevant to the creation and implementation of the Division B judgeship position. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.46). More specifically, our analysis of the October 6, 1990, election returns has led us to further reconsider our determination with regard to the 6th Judicial District, and, based on that reconsideration we are satisfied that the concerns we previously entertained no longer prevail in that district. Accordingly, the objection interposed September 23, 1988, and continued September 17, 1990, to the specified changes under Act 515 (1974) is hereby withdrawn. See 28 C.F.R. 51.48 and 51.55. However, we feel a responsibility to point out that Section 5 of the Voting

Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. 28 C.F.R. 51.41.

Because this matter remains pending before the court in.

Clark v. Roemer, No. 86-435-A (M.D. La.), we are sending a copy of this letter to the court and counsel of record in that case.

Sincerely,

/s/ John R. Dunne
John R. Dunne
Assistant Attorney General
Civil Rights Division

cc: Honorable John V. Parker
Chief Judge, United States District Court
Michael H. Rubin, Esq.
Fred J. Cassibry, Esq.
Robert G. Pugh, Esq.
Kenneth C. DeJean, Esq.
John N. Kennedy, Esq.
Jack C. Benjamin, Esq.

George A. Blair, III, Esq.
Anthony Skidmore, Esq.
Robert P. McLeod, Esq.
Harry Rosenberg, Esq.
Ernest L. Johnson, Esq.
Robert B. McDuff, Esq.
Ulysses Gene Thibodeaux, Esq.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA

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JANICE G. CLARK, et al.

Plaintiffs,

v. CIVIL ACTION
NO. 86-435
SEC. A

CHARLES "BUDDY" ROEMER, GOVERNOR OF LOUISIANA; et al.

Defendants.

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NOTICE OF APPEAL TO
THE UNITED STATES SUPREME COURT

[Filed, October 26, 1990]

The plaintiffs, Janice Clark, et al., file this notice of appeal to the United States Supreme Court from the decisions of the three-judge district court dated September 28, 1990, October 2, 1990, October 22, 1990, and October 24, 1990. This appeal is filed pursuant to 42 U.S.C. Section 1973c and 28 U.S.C. Section 1253.

Respectfully submitted,

/s/ Ernest L. Johnson
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Counsel for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA

----------X

JANICE G. CLARK, ORSCINI L. BEARD, EDDIE G. CRAWFORD, NORBERT C. RAYFORD, VOTER INFORMATION PROJECT, INC., LOUIS SCOTT, SYLVIA COOKS, CONNIE SADLER, LLOYD DANGERFIELD, TOM NELSON, ALBERT RICHARD, BRENDA FORD, EDWARD LARVADAIN, AND JOSIE FRANK, on behalf of themselves and all others similarly situated,

Plaintiffs,

v. CIVIL ACTION
NO. 86-435
SEC. A

CHARLES "BUDDY" ROEMER, GOVERNOR OF LOUISIANA; WILLIAM J. GUSTE, JR., ATTORNEY GENERAL OF LOUISIANA; AND FOX MCKEITHEN, SECRETARY OF STATE OF LOUISIANA, IN THEIR OFFICIAL CAPACITIES,

Defendants.

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SUPPLEMENTAL NOTICE OF APPEAL
TO THE UNITED STATES SUPREME COURT.

[Filed November 6, 1990]

The plaintiffs, Janice G. Clark, Orscini L. Beard, Eddie G. Crawford, Norbert C. Rayford, Voter Information Project, Inc., Louis Scott,

Sylvia Cooks, Connie Sadler, Lloyd Dangerfield, Tom Nelson, Albert Richard, Brenda Ford, Edward Larvadain, and Josie Frank, on behalf of themselves and all others similarly situated, file this notice of appeal to the United States Supreme Court from the decisions of the three-judge district court dated September 28, 1990, October 2, 1990, October 22, 1990, October 24, 1990, and October 31, 1990 (the latter apparently was docketed on November 1, 1990). This appeal is filed pursuant to 42 U.S.C. Section 1973c and 28 U.S.C. Section 1253. This notice of appeal is intended to supplement the prior notice of appeal filed in this case,1 and is not intended to displace that prior notice of appeal.

Respectfully submitted,

/s/ T. Richardson Bobb
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Counsel for Plaintiffs

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1 For instance, this notice of appeal relates to the October 31 order of the district court, which was not available and was not included in the earlier notice of appeal filed on October 26.

STATUTE INVOLVED

Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c:

> Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the first sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1979b(a) of this title based upon determinations made under the second sentence of section 1979b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title

based upon determinations made under the third sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: Provided, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or

other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three

judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court.